Vol. II

TRANSCRIPT OF RECORD

(Pages 409 to 836)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 48

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

No. 64

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 26, 1945.
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IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 5648, 5546.

ROOT REFINING COMPANY,
Defendant-Appellant.

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

TRANSCRIPT OF RECORD

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The Master: Of course you could readily establish the practice, if you think it important, by calling for vouchers in other cases.

Mr. von Holst: I think that would be the shortest solution, and I might say at this time that of the vouchers that have been produced in the Root case, that the only one——

Mr. Harris: How many were produced? Three.

Mr. von Holst: Four transactions complete, with requisition vouchers, both sides and cancelled checks. This one of the first $10,000 payment to Kaufman in 1936 is the only one in which on the distribution part 1226
of the voucher the words "U. O. P. v. Crew Levick eq. suit filed 2/20/36" appears or anything corresponding to that, and this voucher requisition, Amici-Exhibit 11, 3/18/36, is the only one of the voucher requisitions which has the identification of the suit following the words "charge to" instead of "on account of", identifying the matter in connection with which the payment is being made.

Mr. Harris: I don't understand the materiality of it.

Mr. von Holst: I also call the attention of the Master to the fact that—it is not necessary to interrogate the witness about it—the words "U. O. P. v. 1227
Crew Levick eq. suit filed 2/20/36" are very evidently written in after this voucher was drafted.

Mr. Harris: Why do you say that?

Mr. von Holst: Because of the small handwriting and the way the signature is avoided.

Mr. Harris: There is no room for it on the next line.

Mr. von Holst: There would be plenty of room if it were not for the signature intervening there.

Mr. Harris: Where is there room for the signature?

1228 *Colloquy*

Mr. von Holst: Just the same as there is room here (indicating) without putting it in small writing, where it belongs, instead of putting it down below.

Mr. Harris: I don't see the point.

Mr. von Holst: The point is that this designation of Crew Levick case, $10,000, in our judgment, is an afterthought and was not the original entry of the allocation.

Mr. Harris: Why don't you wait until you see the
1229 original? If you see the original, you will know more about that.

Mr. von Holst: I think it important that we investigate the thing now and that Universal be called upon to produce other records corresponding to these from the Root-Crew Levick case, to see if there are any other instances first of interlineation of the suit following after the words "charge to" on the voucher requisition, and any other instances of identification of the suit appearing on the distribution records side of the voucher.

I would further call the Master's attention to the
1230 fact that in this Amici-Exhibit 13, the typing of "Morgan S. Kaufman, 9 East 46th Street, New York" and "42-H reserve for legal bills" all slant down on the page, whereas "U. O. P. v. Crew Levick eq. suit filed 2/20/36" slants upward, and that the "$10,000" instead of being opposite the last line of the legend as normally would be, appears opposite "legal bills" where it would be if this subsequent legend was added afterwards; and further that the "U" of the "U. O. P. Co. vs. Crew Levick" stands farther out and is not in alignment with the "4" and the "L." on the lines immediately above it.

Mr. Harris: It isn't in line with the "L", but it looks to be in line with the "42".

The Master: What do the books show about this payment?

Mr. Harris: A payment charged to 42-H.

Mr. von Holst: Which is an additional reason for suspecting this legend.

Mr. Harris: I want to say this, it seems to me perfectly clear that Exhibit 13 was probably drawn up by some stenographer from Amici-Exhibit 11, and he or she simply followed, as Your Honor I think finds is always true, in drawing up distribution sheets based on requisitions, that the stenographer merely 1232
copies for the distribution sheet, what appeared after "charge to" on the requisition sheet. That is exactly what happened.

42-H, reserve for legal bills, $10,000. 42-H, reserve for legal bills, and then follows "U. O. P. Co. against Crew Levick eq. suit filed 2/20/36." That is a part of the requisition. It is purely a mechanical operation as done by some stenographer, without any help or suggestion from anyone, but since Mr. von Holst makes a point of it, we will—of course, since the charge has been made in so many words that we have altered our books, we cannot let it stand; and we will
afford the Master any and all opportunities to con- 1233
vince himself of the real facts in that respect.

That is the trouble with this sort of proceeding as soon as you start projecting and insinuating without basis of fact. Here these men are talking on the basis of some photostats, without sufficient evidence to support their charge. We gave them the benefit of the inspection of our books and records, which we don't think they are entitled to. I think it is awful to put us in this position. I don't think there has been any showing of sufficient merit to warrant the Master in assuming that there is anything incorrect about our

1234

books, or that we have doctored them, or that we have altered them or that we have added to them in anywise.

We resent this greatly, and if the Master is at all affected by what has been presented, we wish at some future time we will have an opportunity to get such documentary evidence to satisfy the Master.

The Master: The question involved immediately is whether this method of noting what the payment is for is unusual.

Mr. von Holst: That's right.

1235

The Master: Mr. Lenske has indicated it is not unusual. It would seem to me Mr. Lenske is requested to look at his other records and advise us at a later date, whether he finds any other vouchers of this same character; it will probably be sufficient; if not, we can examine further.

Mr. Behrens: It means 1,500 vouchers we have to examine.

The Master: You could readily determine whether this was the practice or the exception.

Mr. Harris: Or whether it was a new practice.

1236

Mr. von Holst: I would like to call the Master's attention, in that connection, to Amici-Exhibit 27, which is a distribution record for the last $10,000 payment on December 2, 1936, where the stenographer took and drew the line correctly, because "42-F reserve for legal bills, $10,000" appears opposite the second line whereas in Amici-Exhibit 13, it is two lines up from the last line.

Mr. Harris: You will notice on Exhibit 27 the stenographer has slavishly followed what is on the requisition, Exhibit 25, after the words "charge to". The explanation is that whoever typed that just followed that language.

The Master: Is there any question pending now?

Mr. Harris: We will endeavor to inform you at the next hearing—not perhaps now, because we have too much to do—but between now and then, if you are not satisfied, we will exhibit Mr. Lenske and the records for further examination.

The Master: Mr. Lenske may, on examination, come to some definite conclusion as he is doubtful now whether there is any such practice.

Mr. Thiess: It seems to me, if the Master please, as far as this practice on these requisitions, whether that is a regular practice or whether it is the exception, or what the practice is, is something that Mr. 1238
Lenske could determine in a few minutes right now, and I don't see why we should wait.

Mr. Harris: If he can do it in a few minutes.

By Mr. Harris:

Q. Mr. Lenske, can you determine whether or not what the gentlemen have asked you is the practice, in a short time? A. With the permission of counsel, we could perhaps submit some other vouchers to indicate what the practice is.

Mr. Harris: He has 1,500 vouchers, and suppose he finds that 1,000 are recorded one way and 500 the 1239
other?

The Master: If he finds one corresponding to what counsel say is the case, he can say he was in error in saying what he did. If he finds some each way, then it might be a matter of weighing the number, or it might lose its importance.

Mr. Harris: I don't know whether Mr. Lenske can do that and continue with this hearing or not.

Mr. Behrens: He has to go down on the 5th floor, into the storage vault and start digging in these ledgers one after the other.

The Master: Suppose you continue with your examination of Mr. Lenske and see if we can get through with this. That other matter can be gone into later, perhaps.

By Mr. von Holst:

Q. Referring to Amici-Exhibit 11, can you state whether when you put your initials on this Exhibit, the words "U. O. P. Co. vs. Crew Levick eq. suit filed 2/20/36" appeared thereon? A. I believe they were.

1241

By Mr. Harris:

Q. Is that your best recollection? A. Yes.

Q. Have you any recollection? A. I have no particular recollection.

By Mr. von Holst:

Q. Why do you say you believe they were? A. I can only judge from the Exhibit itself, the writing in there. I assume it was in there at the time when I placed my initials thereon.

Q. Now, Mr. Lenske, after you as comptroller had put your initials to this document, did or did not anybody have

1242 authority to add "U. O. P. Co. v. Crew Levick eq. suit filed 2/20/36"? A. If the information was not available at the time when the check was issued, it is customary practice to obtain the information at a later date and to affix such information, although in this particular case it was not necessary since the charge to 42 reserve account clearly appears thereon.

Q. Of course, that which you just mentioned is merely the accounting charge? A. Yes.

Q. The voucher requisition, if the services were rendered in some suit, should refer to that suit, should it not? A. Ordinarily it would.

Q. I am referring to Amici-Exhibit 13. Did you see that distribution record when it was made up? A. Yes, I assume I did see it.

Q. Can you state whether the words "U. O. P. Co. v. Crew Levick eq. suit filed 2/20/36" were on it at the time? A. No, I can't state that they were there at the time; they may have been.

Q. Mr. Lenske, referring to Amici-Exhibit 10, there are some dots in the middle of it. Is that a water mark or is it some accounting record? A. That is a cancellation stamp; one that usually appears on the cancelled checks when they are paid by the bank. We have a similar perforated stamp 1244
and that punches holes through there to indicate the date of cancellation.

Mr. Harris: These documents have been out of our possession since the criminal trials and since prior to the commencement of these charges against us. Therefore, any changes that have been made, they were made at a time when no charges of this character were made against us. I think that ought to bear heavily on this question.

The Master: That is a matter that can be considered when we come to the argument.

Mr. Harris: It does seem to me to go to the motive. 1245

By Mr. von Holst:

Q. At the time of your recording this telephone conversation with Mr. Healy as expressed in Amici-Exhibit 10, you did not then make any reference at all to the Crew Levick case, did you? A. No. I may not have known that the payment was in connection with it at that time.

Q. Have you any recollection as to when you found out about it? A. No, I haven't.

Q. Referring again to this Exhibit 10 and to those dots, did I understand you to say that that is the cancellation, with

1246 *B. G. Lenske—For Amici Curiae—Direct*

the date? A. The word "Paid" and the numerals indicating the date on which we issued the check.

Q. Mr. Lenske, if your did not know at the time that you made this memorandum of your phone conversation with Mr. Healy to what suit this payment should be attributed, how did you learn? Who did tell you? A. Possibly our vice-president, Mr. Mitchell or Mr. Behrens, who was familiar with legal matters. I am employed in the accounting department.

Q. You have no recollection of anybody telling you after-
1247 wards? A. Not from memory. The record indicates it was U. O. P. vs. Crew Levick case.

Q. Did you make it a practice in 1935 and 1936 to make a record of telephone conversations on matters of this kind? A. I usually do. Where there is an amount of money involved——

Q. Have you any further records relating to this first $10,000 payment to Morgan S. Kaufman in 1936 which would aid us in establishing when the allocation was first made to the Crew Levick case? A. No, I have no further record about the allocation to the Crew Levick case.

Q. Would that entry, "U. O. P. v. Crew Levick eq. suit
1248 filed 2/20/36" appear in the voucher register? A. No, the voucher register should show merely account number 42, reserve for legal bills.

Q. Where else would it appear? A. Well, it is posted to the general ledger account which was exhibited this morning, account 42-F and account 42-H.

Q. But "U. O. P. v. Crew Levick" would not appear in either of those two? A. No, sir.

Q. I understand you testified that it does not appear in the sub-ledger of the Crew Levick case for 1936; is that right? A. My recollection is we looked at the sub-ledger and we did not find it there.

Q. Is there any other place where it would appear in your books? I mean the allocation to U. O. P. v. Crew Levick, about the $10,000? A. No.

Mr. Harris: That would be true of all charges of 42-H, as I recall his testimony, wouldn't it?

Mr. von Holst: Pardon me?

Mr. Harris: Isn't that true of all charges to 42-H which do not appear in any other account?

Mr. von Holst: That is my understanding.

Mr. Harris: Yes.

Mr. von Holst: Maybe we better clear that up. 1250

By Mr. von Holst:

Q. Does 42-H or 42-F give the details of the account? A. It shows the names of the persons to whom payment was made. That was read in the record this morning.

Q. That is the only information it gives? A. Yes.

Mr. Behrens: Also the voucher number.

The Witness: Also the voucher number, the date and the amount.

By Mr. von Holst: 1251

Q. The invoice register would show what with respect to allocating payments to any specific suit? A. Ordinarily it wouldn't show the allocation. The invoice register is merely the memorandum record to show the name of the recipient of the check and the date, the voucher number and the amount, so that one is quickly referred to the voucher number.

Q. Referring to Amici-Exhibit 5, the distribution record on the reverse side of the voucher, whose initials appear under "Distribution correct"? A. "W. J. I." a checker by the name of William J. Ireland, who is no longer in our employ.

Q. Under the heading "Entered in voucher register"? A. The same, William J. Ireland.

Q. Under the heading "Approved for payment"? A. M. L. Overstreet.

Q. What was his position? A. He is an auditor.

Q. That is to say in the employ of Universal? A. Yes.

Q. Is he still with you? A. Yes, sir.

Q. And under "Entered in cash book", whose initials are those? A. "A. W. L." Arthur W. Lindahl.

Q. The same Mr. Lindahl you have spoken of before? A. Yes.

1253

Q. And "Entered in invoice register"? A. "H." I believe for Mrs. Hess.

Q. Do you know what the correct date for the filing of the Universal Oil Products Company vs. Crew Levick suit is? A. No, I do not.

Mr. von Holst: May it be stipulated that the bill was filed January 30, 1936?

Mr. Harris: I wouldn't know that. I will take it subject to correction. I supposed it was February 20, 1936.

Mr. von Holst: According to the records of the Court it was filed January 30, 1936.

1254

Mr. Harris: Process may have been served on some later date. Undoubtedly it was.

By Mr. von Holst:

Q. I show you Amici-Exhibit 15, photostat of a carbon copy of a letter. Are those your initials (indicating)? A. They are.

Q. You sent that letter to Mr. Kaufman? A. Yes.

Q. On or about the date it bears? A. Yes.

Q. I call your attention to the indication of enclosures, "Encls."

Would that indicate to you that the letter transmitted two enclosures, the check and the remittance slips? A. No.

Mr. Harris: The copy you furnished to us does not have "cc JJM NY", nor does it have Mr. Lenske's initials on it.

Mr. von Holst: This is the original carbon.

Mr. Harris: I have never seen this. I would like to have them handed to me when you offer them in evidence.

Mr. von Holst: I understood you had a full set of everything we have. 1256

Mr. Harris: When a person offers something in evidence, they should furnish a copy to the other side.

Mr. Neuman: We offered papers that the Master offered in evidence.

Mr. Thiess: The photostatic copies were made by the Notary and sent to both of us. How that happened, I don't understand.

Mr. Harris: They seem to be the same except the initials of the carbon copy notation.

The Master: The initials of the comptroller are here.

Mr. Harris: Mine seems to be a carbon copy of my copy of the letter. 1257

By Mr. von Holst:

Q. You say this "Encls." does not indicate more than one enclosure? A. No. It could well be "Encl."

Q. Do you know whether the remittance slip went out with this check? A. No, I do not.

Q. Mr. Lenske, I notice that this Amici-Exhibit 11 is charged to 42-H. A. Yes.

Q. It was in 1936. Was that the first entry in 1936 that was charged to 42-H? A. I can determine quickly from the record.

1258 *B. G. Lenske—For Amici Curiae—Direct*

Q. Let me make my question complete. This next voucher requisition, Amici-Exhibit 17, dated July 27, 1936, is charged to 42-F, is it not? A. Yes, it is.

Q. Will you look at your record to see if there were any charges to 42-H or 42-F prior to the date of this? A. March 18, 1936?

Q. Right. A. There were two charges to 42-H in 1936 prior to March 18th.

Q. Does this charge shown on Amici-Exhibit 11 appear in 42-H? A. It appears in 42-F. That is the account number that was changed in the meantime.

1259 Q. On your books this amount of $10,000, March 18, 1936, is shown under 42-F? A. Yes, sir; voucher number 3120.

Mr. Harris: The testimony shows it is the same account. They merely changed the title of it. It ran right through. The balances were carried off.

The Witness: They didn't change the title; it was merely changed to 42-F from 42-H.

By Mr. von Holst:

Q. Do you mean it was changed on the books of the company and not changed on this voucher requisition? The
1260 voucher requisition does not agree with the book entry. A. It might well be.

The Master: Is that voucher 3120 out there?

The Witness: I believe the papers will show that.

Mr. von Holst: 3120 is the voucher number.

By Mr. von Holst:

Q. When this voucher, Amici-Exhibit 11, was made out, was there an account 42-H? A. It was either 42-H or 42-F. The chart of accounts effective January 1st, indicates that the account number was 42-F. Our accountant merely indicated the number he was accustomed to using, 42-H.

Q. Was there no account 42-H after January, 1936? A. Yes. This was the so-called reserve for Albert L. Monds bills.

Q. Referring to this Amici-Exhibit 17, voucher requisition for payment to Morgan S. Kaufman of $5,000 in July, 1936, it would appear from this photostat that something was clipped to this voucher requisition.

I might say without taking the time to show it to you, that December, 1936, also shows that clip through there. I think the first one does, too. Will you state what was clipped to that voucher requisition? A. Yes. May I have the voucher 1262 itself?

Q. Yes. A. Also the reverse side of the bill.

Q. I hand you Amici-Exhibits 18 and 19. A. I wish to use this to show the Master and the gentlemen present how this is handled. One side of the sheet says, "To be applied against services rendered."

Q. That is from Amici-Exhibit 18. A. Yes. The reverse side, this being the voucher jacket, it would appear in the file something like this (indicating).

Mr. von Holst: Witness folds the papers.

The Witness: Yes. This remittance slip——

1263

By Mr. von Holst:

Q. Don't you mean voucher requisition? A. Voucher requisition——

Q. Amici-Exhibit 17? A. Yes. The voucher requisition would be clipped directly to this voucher, so that it would appear something as I hold it in my hand (indicating).

These papers are all odd sizes.

Q. That would be all that would be clipped with this record, is that right? A. That's right.

1264 *B. G. Lenske—For Amici Curiae—Direct*

Mr. Harris: Both the original and the duplicate of the remittance slip would have the distribution on the back of it.

Mr. von Holst: That isn't so.

The Witness: The remittance slip is a short slip and it is about half the size of the other.

Mr. Harris: That's what I meant. I think what you should do is put one of these regular things in, and put them together and mark this in evidence.

The Witness: All right.

Mr. von Holst: That is a good idea.

1265 Mr. Harris: Isn't the original of the middle paper in there, too? I would like; when the thing goes up to have the check signed, I would like the Master to know just what description goes to the signing officer.

Mr. Behrens: I will bring the accounting sheet and show it to you.

Mr. Harris: It would be an excellent idea.

By Mr. von Holst:

Q. Mr. Lenske, on this remittance slip that goes out to the payee, does anything else appear at all on this remittance slip except the typewritten portion? For instance, on Amici-
1266 Exhibit 18, which has the date and the statement of what it is for and the amount, is there anything, any printed matter on the bottom of the remittance slip? A. There is. The printed matter gives the name, Universal Oil Products Company, 310 South Michigan Avenue, Chicago, Ill., and on the upper part, "The enclosed check is in settlement of the following items."

Here is an exact carbon copy of it.

Q. As I understand from just glancing at that form of the remittance slip which goes to the customer above the legend which appears on Amici-Exhibit 18, appears the word "particulars" as a heading. A. Yes.

Q. In this interoffice correspondence, Amici-Exhibit 16, will you state what the significance is of what appears to be a large "V"? A. Yes.

Q. Mr. Lenske, I hand you three papers that are clipped together and ask you what they are.

Mr. von Holst: I will ask that these three papers be marked Amici-Exhibits 38a, 38b, and 38c.

(A blank paper entitled "Accounting Department: Please issue voucher in favor of" was marked Amici-Exhibit No. 38a.) 1268

(A blank paper entitled "The enclosed check is in settlement of the following items:" was marked Amici-Exhibit No. 38b.)

(A blank paper entitled "Universal Oil Products Company, 310 South Michigan Avenue, Chicago, U. S. A., Distribution" was marked Amici-Exhibit No. 38c.)

By Mr. von Holst:

Q. Will you state what these represent? A. Amici-Exhibit 38a is a requisition for check. On this requisition we would show the name of the payee and the amount in dollars, 1269 and following the words "on account of" there would appear some indication of what this payment is for, and by whose authority such a payment is being requested.

Following the words "charge to", the account number, if known at the time, would be shown and then the requisition, of course, would bear the approval of those persons in the organization who were authorized to approve such check requisition for payment.

Amici-Exhibit 38b is the remittance advice which ordinarily accompanies a check so that the payee, when he receives a remittance without an explanatory letter of any

1270 kind he can determine from this remittance advice w particular bills are being paid. It is possible one might ceive one, two, or more bills, and on a voucher of this t this would show the dates of the invoices and possibly invoice numbers, if numbers are issued to the invoices, a the amounts, so that when the payee receives the check, can check off certain invoices and know that they are cover by the remittance.

Exhibit 38c is a carbon copy of one side of the remittar letter which I have just described, with this addition: on t lower portion thereof are appropriate spaces for initials

1271 members of the accounting department who have to ma certain entries in our several books as those vouchers pa through their hands as a matter of routine.

On the reverse side of Exhibit 38c we have the inform tion pertaining to the account distribution; also the vouch number; the date issued, that is the date the voucher w typed or prepared; the check number and the date of t check, which may be the same day that the voucher was sued, or a subsequent date; also the name Universal C Products, 310 Michigan Avenue, appears thereon. Also t name of the payee is typed on this voucher jacket, and th address or any other information relating to the mailing

1272 this check.

I believe that pretty well covers it.

The Master: That may be received in evidence a physical Exhibit and need not be copied in th record.

By Mr. von Holst:

Q. Is the practice you have just described with respe to Amici-Exhibits 38a, b, and c, true of 1935 and 1936? A Yes.

Q. As I understand it, when the check is mailed ou Amici-Exhibit 38b is slipped out of this space and accon

panies the check to the payee; is that right? A. Yes, ordinarily it does.

Q. So that your permanent jacket, permanent voucher jacket, then comprises the paper number 38c front and back? A. Yes.

Q. And the voucher requisition, 38a? A. That is correct.

Q. What is done with the cancelled check when it clears through the bank and comes back to you? A. It is filed away.

Q. It is filed with the voucher requisition and the vouchers? A. No, it is filed in a separate check box, in a cardboard box; a filing carton. 1274

Mr. Thiess: May I suggest, so that we will all have copies of these, that three of these may be made up, including one for the Master?

Mr. Harris: May I suggest that when you offer documents you give us correct copies?

By Mr. von Holst:

Q. Referring to Amici Exhibit 16, Mr. Lenske, I started to ask you about that before. What is the significance of this big "V" in the middle? A. It is not a "V", that is the letter "M". This is "MC", for Macauley Carter, who happens to be our assistant secretary. His initials are an "M" with a circle, indicating "MC". 1275

Q. Now, this was a letter from Mr. Behrens to you. Does that bear your longhand memorandum there? A. It does, on the right-hand side.

Q. Those are your initials following it? A. Yes, sir, "BGL".

Q. Those initials you just explained, "MC"— A. Macauley Carter.

Q. Was that your authority to request the check from Lindahl? A. Yes, that is correct.

Q. Have you got a sub-ledger showing all payments made to attorneys in the case of Universal Oil Products Company vs. Mid-Continent Company? A. Yes, I believe we have.

1276 *B. G. Lenske—For Amici Curiae—Direct*

Q. Will you refer to that sub-ledger and see first whether this $5,000 payment which is represented on voucher Amici-Exhibits 18 and 19 appears there and at the same time ascertain whether any payments to Morgan S. Kaufman appear in the sub-ledger of the Mid-Continent suit.

Mr. Harris: Of course, this check would not appear there. Isn't this check charged to 42-F?

Mr. von Holst: There is testimony that this was a payment made on account of the Mid-Continent case.

1277 Mr. Harris: He didn't say it might not have been for services in the Mid-Continent case. He said it is charged to the reserve for legal bills, which is 42-F after March, 1936, and no charges that are made to that account are ever made to any other account. Whether there are any other charges to any other account that are paid to Mr. Kaufman or not, I don't know; but we would be glad to look them up. Naturally, no charge made to 42-F appears in any other account.

The Witness: This payment on July 27th, as referred to in Amici-Exhibit 18, does not appear in the sub-ledger of the Mid-Continent case.

1278 *By Mr. von Holst:*

Q. Are there any charges or any payments to Morgan S. Kaufman in the Mid-Continent suit? A. I will look the entire record over in just one moment. There are about four pages. No, there are not.

Q. Mr. Lenske, do payments to Messrs. Hall, Haight, and Thomas appear in the Mid-Continent sub-ledger? A. For what year? Any year that the suit was effective?

Q. Well, yes; or for the firms. A. All right. The payments appear for Hall and Thomas; Spear, Donaldson &

Hall and Charles Thomas, but we find none for Judge Thomas Haight or his firm.

Q. I refer you to Amici-Exhibit 21, and I also want to refer you to Exhibit 22, and to Amici-Exhibit 16, and looking at those three documents, I ask you to state if 16 is the request that you forward the check and Exhibit 21 your notice to Mr. Behrens that you have forwarded the check and Exhibit 22 your letter of transmittal to Mr. Kaufman. A. Yes.

Q. Can you state whether a remittance slip accompanied that check in your letter? A. No, I cannot.

Q. I call your attention to your letter of July 27th to 1280
Mr. Kaufman, Amici-Exhibit 22, and to the fact that it requests an acknowledgment, and to the—— A. Is this the photostat of my letter to Mr. Kaufman?

Q. It is a photostat of a copy of your letter to Mr. Kaufman. A. Yes. I understood you to say the letter to Mr. Kaufman. It is a carbon copy of the letter which was sent to Mr. Kaufman.

Q. It is even farther removed, it is a photostat of a carbon copy. A. That's what I mean.

Q. I also call your attention to Amici-Exhibit 23 which was introduced in evidence here as Mr. Kaufman's letter of acknowledgment of the $5,009 payment. 1281

Mr. Harris: I call attention to the fact that it is addressed to the New York office, 30 Rockefeller Plaza, and the stamp indicates it was received there.

Mr. von Holst: Yes, sir.

Mr. Harris: Where did you get the copy you are now showing him, Amici-Exhibit 23?

Mr. von Holst: From the same source we got the others.

Mr. Harris: It is not a correct photostat of the letter; it apparently is a photostat of the carbon copy in Mr. Kaufman's possession. This follows a photo-

stat of the copy which we received, and the original——

Mr. von Holst: I think that I would like to make this explanation. Amici-Exhibit 22—I am quoting from this letter from Mr. Lenske to Kaufman:

> "It will be appreciated if you will please acknowledge receipt of this remittance to our New York office and send a copy to us here for our files."

Mr. Harris: Number 23 went to Mr. Lenske.

1283 Mr. von Holst: It is evident that Mr. Kaufman made a copy of the letter to New York and sent a copy to Mr. Lenske. That's what Mr. Lenske requested.

By Mr. von Holst:

Q. Is that right, Mr. Lenske? A. Yes. This says:

> ". . . please acknowledge receipt of this remittance to our New York office and send a copy to us here for our files."

It is evident his letter is a second carbon copy of the

1284 original.

Q. What happened, Mr. Lenske, is apparently that you requested Mr. Kaufman to acknowledge the receipt of the remittance to your New York office and send a copy of his letter to them and to you in Chicago. A. Yes, I believe that is correct.

Mr. Harris: May we also mark at this time as Universal Exhibit whatever it is, the copy which we received in New York? That is the original of the letter of Mr. Kaufman (indicating)?

The Witness: That is the original of the letter, the document, Amici-Exhibit 23.

1285

This says "JJM—Copy". I believe that is the copy of this original which bears the New York stamp of the New York office.

Mr. von Holst: We will offer it in evidence.

Mr. Neuman: We have offered these in evidence, the documents that the Master has produced and we don't know where this came from.

Mr. Harris: We don't know where the Master's came from.

Mr. von Holst: Are you offering this, Mr. Harris?

1286

Mr. Harris: I certainly am.

The Master: The original presumably is in the possession of the District Attorney?

Mr. von Holst: I doubt if the original of this is because we have never seen a photostat of it.

Mr. Harris: I haven't seen a photostat of some of the things you have offered. I am producing it because it is the one that was received in New York.

Mr. von Holst: The Master notes that this letter bears the notation on it in longband, "Universal vs. Crew Levick,"

The testimony of Mr. Halle is that this $5,000 was for payment in the Mid-Continent case. A copy of the letter which Your Honor furnished to us from the Government's inquiry, Amici-Exhibit 23, has no notation of "Universal vs. Crew Levick".

1287

Mr. Harris: It wouldn't have.

Mr. Halle: I am under the impression I did make that statement but I corrected it later and said that that was Crew Levick and not Mid-Continent. I wouldn't like to have the statement on the record that I made that unqualified statement.

Mr. von Holst: The record will speak for itself.

1288 *B. G. Lenske—For Amici Curiae—Direct*

(Copy of letter dated July 29, 1936, from Morgan S. Kaufman to Universal Oil Products Company, 30 Rockefeller Plaza, New York City, was marked Universal-Exhibit No. 5.)

By Mr. von Holst:

Q. Going back to the fact that you just mentioned, that in your letter to Mr. Kaufman you asked him to acknowledge receipt to your New York office and to send you a copy of the letter, that is Mr. Kaufman's letter to Universal Oil Prod-
1289 ucts Company marked in longhand "cc: NY JJM"—— A. Yes.

Q. Referring to the notation "cc to GH"? A. Yes.

Q. The "JJM", that refers to Mr. Mitchell? A. Yes.

Q. What I want to ask you is whether that in any way refreshes your recollection as to whether the remittance slip went to Mr. Kaufman with that check; my point being not to make a mystery of it, why would you request an acknowledgment if as a matter of fact the remittance slip went out and the cancelled check would come back to you? A. I can only answer by saying that we requested Mr. Kaufman to acknowledge receipt of this remittance to the New
1290 York office and at the same time to send a copy to us here in Chicago for our files. As to whether the remittance advice slip accompanied the check, that is more than I can say.

Q. When the remittance accompanies the check, isn't the purpose of that practice so that the transaction is complete without any necessity of letters of acknowledgment? A. Yes, unless we desire a receipt, which is very often the case in connection with legal bills—I should say the payment of legal bills.

Q. Do you often request receipts in connection with the payment of legal bills? A. We do at times.

Q. Under what conditions do you ask for receipts for payment of legal bills? A. I don't quite understand your question. Under what conditions——

Q. Ordinarily you receive either a bill or notification from Mr. Halle or someone else to pay a lawyer's bill; is that right? A. Yes.

Q. You send out the check and the remittance slip, don't you? A. Ordinarily, yes, sir.

Q. You don't ordinarily request a receipt from an attorney, do you? A. Yes. We did in this instance, as the record shows. 1292

Q. Well, do I understand that it was customary with Mr. Hall and Mr. Haight, Mr. Thomas and Mr. Belknap and other attorneys to request that they acknowledge receipt of payments? A. If the checks were sent out from Chicago, we might very well ask an attorney to please acknowledge receipt. If in turn the checks were sent to New York, Mr. Halle might deliver them personally and he might or might not take a receipt; I don't know.

Q. Can you think of any instance in your experience other than this $5,000 payment to Kaufman, where a receipt was requested by you? A. I can't recall off-hand, but I do believe such requests have gone out; not necessarily to attorneys; they might have been to charitable organizations, contributions and so forth. 1293

Q. I am confining my question to attorneys. A. I understand that you are.

Q. The question is that it does appear in this record that you say it is quite ordinary and usual for you in Chicago to request a receipt from attorneys in payment of their bills.

Mr. Harris: Where the request to make the payment comes from New York, the request is to acknowledge to New York. Complete your question.

1294 *B. G. Lenske—For Amici Curiae—Direct*

Mr. von Holst: I did complete my question.

Mr. Harris: I object to it.

Mr. von Holst: I have the right to put the question as I did originally.

Mr. Harris: I object to it on the ground that it does not take into consideration the elements which have been testified to.

Mr. von Holst: The question was directed to the general practice.

The Master: I think the question is all right. You can ask your own on cross-examination.

1295 The Witness: As a general practice, I would say no.

By Mr. von Holst:

Q. Under what circumstances would you request a receipt from an attorney whose bill you were paying? A. When so directed by Mr. Halle.

Q. How did you get the directions or did you get directions from Mr. Halle to request a receipt with regard to this $5,000 payment in July of 1936? A. I don't remember. All I have is this Amici-Exhibit 16, which requests that a check

1296 be sent.

Q. Somewhere you got instructions to request Mr. Kaufman to receipt for this payment to the New York office and send a copy to you, did you not? A. I may have; I don't remember.

Q. Well, would you make such a request of a lawyer whose bill you were paying unless you were instructed to do so? A. Ordinarily not; no.

Q. You don't recall why you got the authority this time on this occasion? A. The authority to ask for an acknowledgment?

Q. Yes, sir. A. No, sir.

Q. You don't recall from whom you got that authority?

A. No.

Q. I refer you to Universal-Exhibit No. 5, a letter of July 29, 1936, or photostat thereof, and call your attention to some—I ask you whose writing appears at the top, "Universal vs. Crew Levick" and some initials under it (indicating). A. The writing, "Universal vs. Crew Levick" looks very much to me like Mr. Behrens' writing.

Mr. Behrens: It is.

1298 The Witness: He admits it. The initial "H" below is Mr. Halle's initial.

Mr. Behrens: It bears the New York office receipt stamp and Behrens' initial, "B" and Mr. Halle's initial, "H".

Mr. von Holst: I should like to know why and when this was put on.

Mr. Behrens: About the time the letter was received and was for the express purpose of marking what file it should be put into. That is all it means.

Mr. Harris: And for no other purpose?

1299 Mr. Behrens: No other purpose. There is other stuff in evidence that bears a similar type of designation indicating the file designation. The practice in New York is that whoever had the most knowledge of the matter would mark the letter for filing.

Mr. von Holst: Would you transmit that information to Chicago that this charge was to be allocated to Universal vs. Crew Levick?

Mr. Behrens: It has nothing to do with the allocation of the charge; it is the file designation for the New York office.

Mr. Harris: For the correspondence.

Mr. Behrens: Yes.

Mr. von Holst: Did you in New York have a file for Universal vs. Mid-Continent?

Mr. Behrens: Sure; and for all the lawsuits that were then current.

By Mr. von Holst:

Q. Mr. Lenske, I hand you Amici-Exhibit 24——

The Master: Have you the voucher for the $5,000, 7203?

Mr. von Holst: Yes, sir. That is already in evi-
1301 dence. Each side of the voucher consists of these two Exhibits, 18 and 19.

By Mr. von Holst:

Q. I might ask one further question on this $5,000 transaction: I hand you Amici-Exhibit 17 and Amici-Exhibits 18 and 19, being the voucher requisition and the voucher of that $5,000 payment. It is true, is it not, that on those documents that I have handed you there appears no allocation to any suit? A. Yes, that's true.

Q. The payment was charged to 42-F, reserve for legal bills? A. Yes, sir.

Q. Now, referring to Amici-Exhibit 24, in whose hand-
1302 writing is that memorandum? A. That's my handwriting.

Q. What does it represent? A. It's a memorandum reading, "Healy check $10,000 Morgan S. Kaufman." It is dated December 2, 1936. Down below we find the words "in full for services 1936 and retainer for 1937."

Q. Handing you Amici-Exhibit 25, which is the voucher requisition——. A. Of the same date?

Q. Of December 2, 1936? A. Yes.

Q. I refer to that part which says, "in full for services for the year 1936 and for retainer for 1937 as per telephone conversation Healy New York at request of H. J. H." A. Yes, sir.

Q. Can you state that this Amici-Exhibit 24 was your memorandum of your conversation with Mr. Healy? A. Yes, I believe it was.

Q. What appears on both Amici-Exhibit 24 and 25 is what Mr. Healy told you the check was to be issued for; is that correct? A. Yes.

Q. Do you recall that conversation? A. No.

Q. You don't remember whether anything else was said or not? A. I do not. It was six years ago.

Q. And Amici-Exhibit 26 and 27 are the voucher for this payment? A. Yes, I would say that's the voucher referring to 1304
the payment.

Q. And in none of these Exhibits, Amici-Exhibit 24, 25, 26, or 27, is there any indication of any suit to be specifically charged; is there? A. No, there isn't.

Mr. Harris: That was charged to 42-F.

The Witness: Yes, reserve for legal bills, the same as the other three vouchers.

By Mr. von Holst:

Q. The same as the other three? A. I said 42-F, which is the reserve for legal bills.

Q. Bearing in mind that the first two payments, the $25,000 one and the first $10,000 one were charged to 42-H? 1305

Mr. Harris: The same account.

The Witness: Yes.

Mr. Behrens: The last three were charged to 42-F; the first was charged to 42-H.

Mr. Harris: The requisition for the second did say 42-H.

Mr. Behrens: That's right.

By Mr. von Holst:

Q. I hand you Amici-Exhibit 29——

1306 *B. G. Lenske—For Amici Curiae—Direct*

Mr. Harris: I call attention to the fact that Mr. Lenske asked Mr. Healy to acknowledge receipt of the check.

By Mr. von Holst:

Q. Referring to Amici-Exhibit 29 and to Amici-Exhibit 37, is Amici-Exhibit 37 the pencil notation referred to in the second paragraph of this letter to Mr. Healy, Amici-Exhibit 29? A. Yes, I would say that was.

Q. In whose handwriting is the pencil notation, Amici-Exhibit 37? A. It seems to be in Mr. Lindahl's handwriting,
1307 although the last entry, December 2, with the number 12005, which is the voucher number, seems to be in my handwriting.

By Mr. Harris:

Q. But the $10,000 is in Mr. Lindahl's handwriting? A. Yes, the $10,000 is in Mr. Lindahl's handwriting.

Q. In other words, you filled in the information? A. I filled in the reference voucher number 12005.

By Mr. von Holst:

Q. But all the rest of it is in Mr. Lindahl's handwriting?
1308 A. Yes.

Q. This letter you wrote to Mr. Healy refers to the pencil memorandum requested by Mr. Halle. Do you recall Mr. Halle requested this pencil memorandum, Amici-Exhibit 37? A. I don't recall Mr. Halle requesting it. Mr. Healy may have requested it. Mr. Healy may have told me over the telephone to have such a memorandum.

Q. Have you any recollection of that? A. Oh, a very vague recollection.

Q. Can you give us the best of your recollection what Mr. Healy told you? A. Merely to send down that check for $10,000 and to inclose a memorandum of the payments up to

date which were made to Mr. Morgan S. Kaufman. That memorandum gives that information.

Q. To Mr. Halle? Did Mr. Halle say why he wanted this? A. I didn't talk to Mr. Halle.

Q. Did Mr. Healy say why Mr. Halle wanted it? A. No.

Q. You wrote a letter to Mr. Kaufman enclosing this check for $10,000; did you not, and sent it to Mr. Healy at New York together with the pencil notation? A. Yes, at Mr. Healy's request, as I recall it, and as the evidence shows.

Q. Did you receive that request from Mr. Healy before the voucher requisition was made out, Amici-Exhibit 25? 1310
A. Oh, yes.

Q. What is the reference to the telephone request in the note? A. It reads, "Mail with letter to Healy at New York office."

Q. Is this voucher requisition, Exhibit 25, in your handwriting? A. It is.

Q. This last payment of December 2, 1936, to Morgan S. Kaufman, according to the voucher requisition was in full for services for the year 1936 and for retainer for 1937.

Was any part of that payment allocated on the books of the Universal Oil Products Company to the year 1937? A. I would have to refer to the books; I don't believe so.

Q. Will you do so? A. It was charged to the reserve in 1311
December, 1936.

Q. I understand that no part of it was allocated to 1937. A. That's right.

Q. At the end of the year 1936, there was an adjustment in that reserve account, wasn't there, to which this $5,000 was charged? A. What kind of adjustment are you referring to?

Q. Was there any adjustment made at the end of each year? A. Not to my knowledge.

Q. Was there an adjustment at the end of each year of the amount remaining in the reserve account 42-H or 42-F?

1312 A. You mean by increasing the amount or decreasing the amount as shown by the ledger?

Q. Yes, or balancing it off. A. No. We could balance it off and bring down the remaining balance in the account, but that wouldn't in any way change the amount.

Q. Supposing that in 1936, for instance, you would increase the 42-F with a certain sum? A. Yes.

Q. And the charges to it—to the same account were much less? A. Yes.

Q. What would you do with the difference?

1313 Mr. Harris: I am objecting to that. That is not relevant. That hasn't a thing to do with this; how we account to the Federal Government for income taxes. It has nothing to do with this.

The Master: The question was not directed to income taxes.

Mr. von Holst: Not at all.

Mr. Harris: I don't get the point. He said the balance just stayed there and no adjustment was made. I object to any further questions.

The Master: That is a fact. As I observed from my own observation, the balance was carried on from year to year.

1314 Mr. von Holst: That is all I was seeking to ascertain.

By Mr. von Holst:

Q. Mr. Lenske, were the books of Universal audited annually?

Mr. Harris: I object to that.

The Master: What is the purpose of the question?

Mr. von Holst: It is a preliminary question.

The Master: I think he can answer it.

The Witness: They are.

By Mr. von Holst:

Q. In connection with these annual audits did you furnish a liabilities certificate to the auditors?

Mr. Harris: I object to that.

Mr. von Holst: I had not finished the question.

By Mr. von Holst:

Q. Did you furnish any liabilities certificate to the auditors showing any amounts which are a charge against Universal that have not been determined or liquidated in that year? 1316

Mr. Harris: I object to that as purely a matter of accounting; and it has nothing to do with this case.

The Master: You might state your purpose.

Mr. von Holst: The purpose is this, if the Master please: certain testimony has been adduced that Morgan Kaufman was retained by Belknap in 1932. There is further testimony that indicates that the arrangement was on the basis of $10,000 a year. What I am asking is to ascertain whether the books of the company—or, rather, put it this way: whether at the end of the calendar years for those years this $10,000, alleged $10,000 liability was furnished by the comptroller of the company in the form of a liabilities certificate to the auditors. 1317

Mr. Harris: I don't see the point of that.

The Master: I think he can answer it. I think I know what the answer will be. You may answer the question.

Mr. von Holst: The point is that for the years 1932 and 1933 and 1934 he was paid nothing; he wasn't paid until 1935.

The Master: I know.

Mr. von Holst: If there was a liability to pay him $10,000 a year for those years, it should be reflected in the liabilities certificate furnished by the comptroller of the company to the auditors of the company.

Mr. Harris: I suppose we ought to put Senator Reed's million and some of Judge Haight's charges in. None of those are in the books.

The Master: It is a matter of argument whether it should have appeared, but I think he may answer whether it did appear.

1319 The Witness: O. K. to answer?

Mr. Harris: Sure.

The Witness: A liabilities certificate is furnished, but I believe the certificate is general in its nature in that it states that all liabilities which are known to us at the time have been included in the books of account, or words to that effect. There are no specific items or amounts or cases set out in the certificate. The annual certificate, as I recall, which we furnish to our accountants in making an audit for us is a general certificate.

By Mr. Harris:

1320 Q. Was the account reserve for legal bills, account 42-H and 42-F always more than sufficient to pay any amount that Mr. Kaufman ever claimed? A. Yes.

By Mr. von Holst:

Q. Did the certificate for the years 1932, 1933, and 1934 state that all the known liabilities appeared upon the books which the auditors were examining? A. Yes, I think the certificate contains words to that effect.

Q. Can you state whether for those years, 1932, 1933, and 1934, the books of Universal reflected the liabilities to Morgan S. Kaufman of $10,000 for 1932, $10,000 for 1933, and $10,000 for 1934? A. Not specifically, but only as same

might be included in this general reserve for legal bills account number 42-H or 42-F which we have been discussing.

Q. You are positive that his name does not appear on the books for those years in connection with any such liability; is that right? A. Yes,

Q. Can you produce, and will you produce, Mr. Lenske, the approved bills of Judge Haight's firm and also of Judge Haight for the years 1932 through 1936 in the case of Universal Oil Products Company vs. Root Refining Company?

Mr. Harris: We will not, unless directed by a Court of competent jurisdiction, or unless we decide as a 1322
matter of amity to do so.

I think this is going very far afield. If the Master thinks that the amounts we paid Judge Haight, our counsel, are material and relevant, we would be very glad to get the information.

I have before me what may be of some enlightenment both to the Master and to Mr. von Holst, a claim of Judge Haight's firm or a requisition voucher and distribution, for a $15,000 payment which was made in March, 1934, to Judge Haight's firm for services in the Root case; and I call your attention to the fact that no bill; no invoice was entered and the thing was 1323
handled just the same as the Kaufman matter. I show it to you as a matter of information. This happened to be picked out of the files and we can show it to you.

I don't like to exhibit this information of our business to these people; but if the Master thinks it is material we will get out the papers and exhibit them at a subsequent hearing. It will take some time to get up.

Mr. von Holst: What we request are the bills.

Mr. Harris: There are no bills. That's the point.

The Master: Did you have in mind the wording of the bill or the amount?

1324 *Colloquy*

Mr. von Holst: No. The amount may be material. The specific point is that we understand from Mr. O'Mara's letter to us of June 18, 1942, that there were bills. This is a letter from Edward J. O'Mara to Mr. Thiess, dated June 18, 1942. He states:

"Mr. Harris has advised me that you desire the correspondence from Judge Haight's file before the next hearing in the above matter and I am, therefore, enclosing copies of Judge Woolley's letter to Judge Haight, dated September 25, 1934,
1325 and copies of all correspondence in Judge Haight's files relating to Morgan S. Kaufman.

"I note in the copy of your letter of June 8th to Mr. Harris that you would like to have included with this correspondence any entries in Judge Haight's diaries or bills for the periods embraced by the years 1932 to 1936, which relate in any way to Morgan S. Kaufman. I am advised by Judge Haight's secretary that some time after his death, she destroyed his diaries on the assumption that they were of no further value inasmuch as charge slips had been made up from the entries therein.

"I have personally examined all bills submitted
1326 to Universal during the years 1932 to 1936, both inclusive, and find no reference to Mr. Kaufman in any of them.

"Very truly yours,

"/s/ Edward J. O'Mara"

The reason we request the production of these bills, regular lawyers' bills Judge Haight evidently submitted, is that Mr. Halle has testified there were never any bills rendered by Judge Haight.

Mr. Halle: Did I say never?

Mr. von Holst: I believe the testimony is definite that they never submitted a bill.

Mr. Harris: He said, "Never," Mr. Halle.

Mr. von Holst: We understand from Mr. Lenske's evidence this morning that all bills were approved and O. K.'d by Mr. Halle. I think we ought to know what the fact is.

Mr. O'Mara: I would like to make a statement, in view of the fact that my letter is involved.

Very frequently during the course of protracted litigation, litigation that went on over long periods of years such as the Root case did, Judge Haight would either write a letter to Mr. Halle or talk with him 1328
personally either by telephone or personally and request a payment on account of the services that had been performed. Payments were thereupon made merely on the request of Judge Haight without any bill whatever. Usually at the conclusion of the litigation there was a bill rendered and an amount fixed and credit shown on that bill for the payments that had been made on account.

Isn't that your recollection, Mr. Halle?

Mr. Halle: I think in all instances, whether even a bill was rendered finally or not, Judge Haight came in and talked with me what I thought he ought to have in the way of a fee, and I always left it to him. 1329
He said to me, "What do you think about it?"

"I think it's more than fair." Whether in some instances the bill was rendered or not, I don't recall.

Mr. O'Mara: My recollection is that in the Root case at the termination of the case a bill was rendered.

Mr. von Holst: I read from the transcript offered as Amici-Exhibit 32, Mr. Halle's testimony before the Grand Jury. The Foreman of the Grand Jury is asking the questions:

1330 *Colloquy*

Foreman: No; there are no supporting papers attached to that voucher. A. That isn't exceptional with us.

Foreman: My question is, did the other firms, you mentioned a number of firms here, did they call you up on the telephone and say to you, "Send me a check for $25,000"? A. Yes, and more.

Foreman: That procedure is—— A. Very informal.

Foreman: Is that the convenient way in which you pay your lawyer bills? A. Convenient to me

1331 and evidently convenient to them.

By Mr. Correa:

Q. Is that true of Cravath, DeGersdorff, Swaine & Wood? A. No, because they have detailed services and expenditures.

Q. How about Hughes, Sherman & Dwight? A. Same thing.

Q. Wall, Haight, Carey & Hartpence? A. Never had a bill from them; never had a receipt from them; never had any understanding with him as to his fees; from time to time he would come in

1332 and say, "I think I ought to have so much money," and I usually told him, 'I think it's not only fair but it is entirely satisfactory in every way,' and never had any argument on attorneys' bills. I think this is the only one I ever had with regard to fixing the fee because of the indefiniteness of it of Belknap. Now may I make a statement?"

That is as far as I read.

I also read from page 337 of the transcript of the proceedings before Master White. Mr. Halle's testimony on Direct Examination:

"May I say I didn't know until Judge Haight's death what the basis of his charges were to us.

When he wanted some money, he phoned me, or came in, and said, 'Can you let me have some money?'

"'How much do you want, Judge?'

"Well, $10,000, sometimes it was larger, sometimes it may have been less.

"I said, 'Certainly.'

"Then when proceedings came in we sat down and discussed them.

"I never contested what was due him, but there was never any agreement with him, and I hadn't hired him originally." 1334

That testimony, if the Master please, is the basis of our request that the original bills be produced that Judge Haight or his firm rendered in the Root case, in order that we may see whether they have the approval of Mr. Halle and whether such bills were rendered.

Mr. Harris: You have one specific instance where $15,000 was paid without any bill on Mr. Halle's approval over the telephone.

Mr. von Holst: I submit it doesn't make any difference, in response to our request, to state an instance where a bill may not have been rendered. In view of 1335 this very vehement and emphatic testimony, whether bills were rendered in the first place and whether they were O. K.'d by Mr. Halle in the second place, the credibility is an issue in this case.

Mr. Harris: I don't believe Mr. Halle is as vehement or as emphatic as counsel seem to think. However, we will endeavor to get those together.

The Master: All right. I think it would be well.

Mr. Harris: I want to reserve the right to consider the objection; I am not disposed to do so.

The Master: You have not them now?

Mr. Harris: We haven't them now, so we will have to postpone it.

Mr. von Holst: If the Master please, I think those bills are in the records of Universal right here in Chicago.

Mr. Harris: They may be, but we don't think you are entitled, on the spur of the moment, to completely disrupt our organization. We say we will produce them at the next hearing either here or in Philadelphia, not today or tomorrow. We have to have a little time to get them together and do other things, carry on business in the meanwhile. We are entitled to reasonable notice on the subpoena duces tecum. These were not even requested in your suggested subpoena duces tecum. We were taken completely by surprise. We want reasonable time to produce them.

Mr. von Holst: It is in the Master's discretion.

The Master: I think that is reasonable, and I think you will get them together.

Mr. Harris: We will get them by the time we have the next hearing, and it will not be before a week or ten days. We will have them ready.

Mr. von Holst: Direct examination closed.

Mr. Harris: No cross examination.

Mr. von Holst: There is a matter which the Master suggested at noon, whether the total fees to the lawyers in the Root case should be made part of this record.

The Master: Yes, in view of the fact that a large amount was paid Mr. Kaufman, and the evidence so far indicates, as far as we know, no services in this case were performed by Mr. Kaufman. Then the amounts paid to the lawyers who did perform the services might become relevant.

Mr. Harris: We will produce that also, at the same time, except we reserve the right of objecting.

Mr. von Holst: If the Master has any questions——

The Master: You have produced a pencil memorandum this morning. I hadn't seen that before.

Mr. Thiess: It was produced at our request.

The Master: I would like to know what it is and where it came from.

Mr. von Holst: I have been remiss in not handing you these things, before interrogating on them. I assumed you had copies of them. I did interrogate the witness about it this afternoon. He testified this was Mr. Lindahl's writing and that this was his (indicating).

Mr. Harris: Mr. Lindahl put in the 10,000, and he supplied this information.

The Master: How did it happen to be made up? 1340
When was it made up?

Mr. Harris: Mr. Healy gave the information, I think, according to the letter Mr. Halle had requested.

The Master: It was made up comparatively recently?

Mr. Harris: No, at the time of the last payment to Mr. Kaufman.

Mr. von Holst: December 2, 1936.

The Master: That he might have some information as to how much Mr. Kaufman was paid?

Mr. Harris: Yes.

The Master: All right. I understand it. That's 1341
all I had in mind.

Mr. Harris: This closes your examination for the time being?

The Master: You have nothing else at this time?

Mr. von Holst: No.

(Argument.)

(Adjourned to Wednesday, September 9, 1942, at 10:45 ock A. M. to meet at the office of the Master in the Land le Building, Philadelphia, Pennsylvania.)

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orted by Charles R. Lepore.

1342

Transcript of Hearing, September 9, 1942

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Wednesday, September 9, 1942, at 10:45 o'clock A. M., Eastern War Time.

Present: THOMAS RAEBURN WHITE, ESQ., Master.

J. BERNHARD THIESS, ESQ.,
(77 West Washington Street, Chicago, Illinois),

1343

THORLEY VON HOLST, ESQ.,
(77 West Washington Street, Chicago, Illinois),

amici curiae.

ROBERT W. POORE, ESQ.,
(77 West Washington Street, Chicago, Illinois),

SIDNEY NEUMAN, ESQ.,
(77 West Washington Street, Chicago, Illinois),

Counsel accompanying *amici curiae.*

W. P. Z. GERMAN, ESQ.,

1344

RALPH S. HARRIS, ESQ.,
(100 Broadway, New York, N. Y.),

EDWARD J. O'MARA, ESQ.,
(15 Exchange Place, Jersey City, New Jersey);

JOHN R. MCCULLOUGH, ESQ.,
(100 Broadway, New York, N. Y.),

Representing Universal Oil Products Company.

Mr. Von Holst: I should like to file with the Master the subpoenaes which were served on Mr. Duncan and Mr. Herrell, for filing with your papers. The returns are noted on them.

The Master: Yes, very good.

Mr. von Holst: If the Master please, our next witness is Mr. Duncan. He may be sworn.

The Master: Before we start the proceedings I may say that in response to the request made that I ascertain from the Clerk of the Court of Appeals when Judge Woolley last was active in that Court, I have a letter from him, and if counsel are satisfied that that is adequate evidence I will 1346
put it on the record.

Mr. Harris: Certainly.

The Master: It simply says—

(The letter referred to was read by the Master. A copy thereof follows:

"OFFICE OF THE CLERK

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

PHILADELPHIA

1347

2046 U. S. COURT HOUSE,
9th & CHESTNUT STS.

WILLIAM P. ROWLAND
Clerk

May 29, 1942.

Thomas Raeburn White, Esq.
Land Title Bldg.
Philadelphia, Pa.

Dear Tom:

Yours of the 27th is at hand to-day acknowledging my message regarding Judge Woolley.

1348

Judge Woolley sat continuously in our court up to and including June 7, 1935, which was practically to the end of our regular sessions for hearing arguments on the calendar for the March Term of that year.

My recollection is that he had a heart attack shortly after that, but nevertheless followed his usual custom of going on vacation to New England early in July, and took work away with him, as was his habit. I believe he had another heart attack while in Maine, and since that time has done practically no work whatever in our court.

1349

Very truly yours,

/s/ WM. P. ROWLAND
Clerk")

The Master: You may proceed, then.

EVIDENCE ON BEHALF OF AMICI CURIAE (*Continued*).

1350

W. L. DUNCAN, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. Will you state your name? A. W. L. Duncan.

Q. And your residence? A. Tavares, Florida.

Q. How do you spell that? A. The town?

Q. Yes. A. T-a-v-a-r-e-s.

Q. And what is your occupation? A. I am abstractor, abstractor of land titles.

1351

Q. How long have you been in this business of being abstractor of land titles? A. Since 1913, about twenty-nine years.

Q. You are president of the Lake Abstract and Guaranty Company, of Tavares, Florida, are you not? A. Yes, sir.

Q. And what is the business of this company? A. Compilation of abstracts, principally. We also are agents for title insurance, that is, issuing agents.

Q. You are issuing agents for what title insurance company? A. Title and Trust Company of Florida. It is located in Jacksonville, Florida.

1352

Q. How long has the Lake Abstract and Guaranty Company been in business? A. Since '87, 1887.

Q. And how long have you been president of that company? A. Since 1932, I believe.

Q. And what was your connection with the company before that? A. Well, before that I was treasurer for a while, and then before that just an employee.

Q. And how long in all have you been connected with the Lake Abstract and Guaranty Company? A. About twenty-nine years.

Q. In the conduct of this business have you personally examined the public records of Lake County? A. Yes, sir.

1353

Q. Have you personally examined the public records of Lake County, Florida, from 1929 to 1942, with reference to the record title of the property in that county which was conveyed to either Morgan S. Kaufman or J. Warren Davis by Stokley or by the town of Mount Dora? A. I have.

Q. Have you prepared a plat of certain of the Stokley property falling within Sections Twenty-nine, Thirty-one and Thirty-two, Township 19 South, Range 27 East, in Lake County? A. Yes, sir.

Q. I show you a plat and ask you if you prepared that document. A. Yes, sir.

1354 *Colloquy*

Mr. Von Holst: I ask that the plat be marked for identification as Amici Exhibit number 39.

Mr. Harris: Just a moment, Mr. Master. I wish to note at this time my objection to the materiality and relevancy of all of this testimony.

The Master: He is only marking for identification.

Mr. Harris: I mean all of the testimony that has gone on, and it is obvious to me that some effort is to be made to offer testimony respecting the so-called Stokley loan.

1355 The Master: Yes.

Mr. Harris: I wish it noted, so as not to interfere with the orderly procedure,——

The Master: Yes.

Mr. Harris: —that I am objecting to the materialty and relevancy of all evidence with respect to the so-called Stokley transaction.

The Master: Well, that objection is overruled.

(Plat prepared by W. L. Duncan was marked Amici Exhibit 39 for identification.)

1356 Mr. von Holst: I hand a copy of the plat to the Master which has been marked Amici Exhibit 39 for identification.

Mr. Harris: Just a moment. Are you going to offer this in evidence?

Mr. von Holst: We will when I have proved it.

Mr. Harris: What is the object of passing it around when it is merely in the stage of being identified and it is not in the case at all?

Mr. von Holst: The object is so that the witness's explanation of the plat may be intelligently followed.

Mr. Harris: I don't think that is the way to prove it.

The Master: Well, he has identified it as a plan or plat, as he calls it, having to do, I assume, with the transfers of property——

Mr. von Holst: In Lake County, Florida.

The Master: —in Lake County, Florida, and having some bearing on the Stokley transaction.

Mr. von Holst: That is correct.

The Master: I will overrule your objection.

1358

By Mr. von Holst:

Q. Now, at the bottom of this plat you have three names indicated, the second of which is George Wilkins Sawyer. Is that first name, George, correct? A. No, sir, John Wilkins Sawyer.

Mr. Harris: Well, how——

Mr. von Holst: Speak a little louder, please.

The Witness: The "George" is incorrect.

Mr. Harris: Well, just a moment, I object to that. It says "George" on here. What does he mean, "George" is incorrect? 1359

Mr. Thiess: Why, the plat has been corrected to show that it is "John".

The Master: My copy has been corrected to show "John".

Mr. Harris: Mine has not been.

Mr. von Holst: It is a mere mistake.

Mr. Harris: You can appreciate my dilemma when mine has not been c[illegible]ected.

Mr. von Holst: The witness has not changed his, yet. We are merely changing it now on the record.

1360 *W. L. Duncan—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Have you examined the deeds from Mr. Sawyer?

Mr. Harris: I object to this as incompetent. This is not the best evidence, or the way to prove that.

Mr. von Holst: This question is merely preliminary, on the name.

Mr. Harris: The plat is not in evidence, Your Honor. I don't understand why it should be corrected before it is proven and put in evidence, and
1361 this is no way to prove it. It is certainly not the proper way to prove a title, a record of title in Florida.

Mr. von Holst: I have not, if the Master please, begun my proof of the record, I merely wish to note a correction on the instrument that he is about to expound, and I want to establish the fact that he has consulted the original deeds and that the correct name is John, rather than George, as far as the examination goes.

Mr. Harris: That is by means of hearsay and incompetent evidence attempting to prove who the rec-
1362 ord owner of certain property is. This is not in evidence, Your Honor. How can we correct something which is not in evidence?

Mr. Thiess: It has been marked for identification. It can be corrected.

The Master: Well, I think the testimony——

Mr. Harris: It is not in the record at all.

The Master: The testimony relates to the party who was a grantee or grantor in certain deeds, and the witness is asked whether the word "George" on this plat was written in error for "John". I think that question may be answered.

Mr. Harris: I object to that as incompetent.

The Master: Overruled.

Mr. von Holst: Now, will you read the question?

(The question was repeated by the reporter as follows: "Q. Have you examined the deed from Mr. Sawyer?") A. Well, now, I examined the deed to Mr. Sawyer from which this is taken.

By Mr. von Holst:

Q. And in that deed how does his name appear? A. John Wilkins Sawyer. 1364

By the Master:

Q. How did this error happen to occur, do you know? A. I made that mistake myself in identifying the names.

Q. You used your recollection instead of looking at the record, is that it? A. Oh, yes. As a matter of fact, I have heard his name so many times, I know that John is correct, other than just this deed.

Mr. Harris: I hope this is not a criterion of the accuracy of this very improper instrument.

Mr. von Holst: I object to that observation as uncalled for at this time. 1365

Mr. Harris: Any lawyer who has ever been in court knows this is no way to prove a title or series of titles.

By Mr. von Holst:

Q. Will you correct that name on the plat marked Amici Exhibit 39 for identification?

(The witness corrected the name on the plat, Amici Exhibit No. 39, to read John Wilkins Sawyer, instead of George Wilkins Sawyer.)

1366 *W. L. Duncan—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Now, referring to the plat, what does the upper half of the plat represent? A. You mean the area that it covers?

Q. Yes. A. Section Twenty-nine, as we describe in Florida, 29-19-27; I mean Section Twenty-nine, Township nineteen, Range 27.

Q. And the lower half of the plat represents what section? A. Well, it represents the entire section of Section Thirty-two and a very small part of Section Thirty-one of the same township and range.

1367 The Master: Did those figures appear on the plat? Oh, yes, I see.

By Mr. von Holst:

Q. Will you indicate where on the plat Section Thirty-one appears? A. On the west, or to the left, west side of the plat, as I hold it here. This is north, always, the top; it would be the west side, or to the left side of the plat.

Q. Of the lower half, is that right? A. Of the lower half, yes, sir. That is the normal way of numbering the sections in a township.

1368 Mr. Harris: I move to strike out the witness's volunteered statement.

The Master: He said it would be the normal way.

Mr. Harris: Well, I don't know what the normal way is. It might be normal for him and abnormal for us. I have seen a good many plats and never saw one like this, and I dare say the Master has not.

The Master: Well, I will overrule your objection.

By Mr. von Holst:

Q. Now, on this plat you have indicated the location of certain blocks, have you not? A. Yes, sir.

Q. Of what town? A. Town of Mount Dora, Florida.

Q. And where did you take the location of these blocks from? A. From the official plat of the town of Mount Dora, as recorded in Lake County, Florida.

Q. And, generally speaking, what are the dimensions of each block in the Township of Mount Dora? A. About 330 feet; that is including the centers of the streets, if they were extended to the centers of the streets.

Q. You mean 330 feet square? A. That is right.

Q. Containing about how many acres? A. About two and a half, and, of course, that would be including half of 1370
the streets surrounding.

Q. Now, on this plat you have indicated a blue cross hatch. What do you indicate by blue cross hatching and blue legends? A. As the record property of John Wilkins Sawyer.

By Mr. Harris:

Q. As of what date? To the present time, you mean? A. Yes, sir.

The Master: I didn't quite understand that answer. 1371

Mr. von Holst: Read the answer, please.

(The answer was repeated by the reporter as follows:

"A. As the record property of John Wilkins Sawyer.")

The Master: The word "record" I didn't get.

Mr. Harris: As of the present time.

The Master: Yes.

1372 *By Mr. von Holst:*

Q. And what do you indicate by red on this plat? A. As the record ownership of Morgan S. Kaufman.

By the Master:

Q. Well, as of what date?

By Mr. von Holst:

Q. As of what date? A. As of the present, or as of the
1373 time I examined it the last time I examined the records.

Q. And when did you make this examination—— A. This last——

Q. —from which you composed this plat? That is to say, when was the last time you checked the records? A. Oh, I have checked the records within the last ten days, just prior to coming up here.

Q. You made the plat sometime before that? A. Before that, yes, sir.

Q. And what do you indicate on this plat by yellow cross hatch? A. As the record ownership of J. Warren Davis.

Q. Now, where the cross hatching is both blue and red
1374 on the same area, what is indicated? A. Well, that there is a conflict in title to the two parties, as shown by the colors.

Mr. Harris: I didn't quite understand that.

The Master: I didn't, either.

Mr. von Holst: Speak a little louder.

The Witness: Well, in this particular case here, yellow represents the property of J. Warren Davis, and blue the property of John Wilkins Sawyer, and where I have combined the two crossings it means a conflict in title of the two.

Mr. Harris: I don't know what that means.

By the Master:

Q. Conflict in title? A. Well,——

Q. You mean both—— A. Well, one owner may have a certain ownership, record ownership, and the other party has a certain record ownership.

Q. Without any transfer from one to the other? A. That is true, yes, sir.

Q. In other words, they both have received a transfer of title from some third party? A. Yes, sir.

Q. So far as you can tell from the records? A. Yes, sir.

1376 Mr. von Holst: I may say to the Master that we shall introduce in evidence the deeds shortly, but we thought in the presentation of this testimony it would be easier to have the plat explained first——

The Master: Yes.

Mr. von Holst: —graphically, and then the deeds will be introduced with reference to the plat, I just thought it would be more intelligible that way.

By Mr. von Holst:

Q. And where you have indicated on the plat red and blue, what does that mean? A. That means a conflict of the record title of Morgan S. Kaufman and John Wilkins 1377 Sawyer.

Q. That is, without any reconveyance by Sawyer of his title? A. That is correct.

Q. And in your key at the bottom, where you have got the names of Morgan S. Kaufman and John Wilkins Sawyer and J. Warren Davis, you have colored them, respectively, red, blue and yellow, is that right? A. Yes, sir.

Q. And to indicate what you have called the conflict in the cross hatching, wherever there is a conflict, those colors are cross hatched—— A. That is right.

Q. —together, is that right?

Mr. Harris: I object to the use of the word "conflict" by either counsel or the witness. The witness is not a lawyer, and I frankly, Mr. Master, don't understand it. It is a misleading term. If he means that there are of record and outstanding two conveyances of the same properties to different people, and this is understood to be a shorthand to describe that, then I will withdraw my objection.

The Master: That is what I understand him to say.

1379 The Witness: That is what I mean.

Mr. von Holst: That is it.

Mr. Harris: All right. Well, Mr. Master, may I interrupt once more, to ask whether in these conflicts, Mr. von Holst, the conflicts as we have explained them relate to the entire tract covered by the cross hatching, or only certain portions of it?

Mr. von Holst: Do you want me to answer, or the witness?

Mr. Harris: Well, you can ask the witness.

Mr. von Holst: Yes, the explanation is that wherever the cross hatching, for instance, the blue and
1380 red, covers an entire area, that indicates that there is a conflict—I will call it a conflict for short—in all that entire area.

Mr. Harris: In other words, there are two deeds to different persons——

Mr. von Holst: Of the same property.

Mr. Harris: Both of record to the same property, and the entire same property?

Mr. von Holst: That is right.

By Mr. Harris:

Q. Is that right, Mr. Duncan? A. Yes, sir.

Q. With no explanation of why this was done? A. No.

Mr. Harris: I see.

By Mr. von Holst:

Q. And where did you get the information to make up this plat? A. From the public records of Lake County, Florida.

Q. And those public records, of course, contain the recorded deeds, do they? A. Deeds, mortgages or anything respecting titles to land. 1382

By the Master:

Q. Do you customarily in your company make up abstracts of title for people who are purchasing properties—— A. Yes, sir.

Q. —or selling? A. Yes, sir.

Q. And is this the way you do it ordinarily? A. Not by plats, no, sir? This is simply indicating on paper the apparent record ownership.

Q. Indicating the results of your examination? A. Yes, sir.

Q. You insure titles, do you? You insure titles, your company? A. We are issuing agents for a title company. 1383

Q. Yes.

Mr. von Holst: That, the witness said, was the Title and Trust Company of Florida.

The Witness: Title and Trust Company of Jacksonville, Florida.

By Mr. von Holst:

Q. Now, referring again to the plat, what do the letters and legends in parentheses in color indicate? A. Well, they are——

Q. First of all, what do the letters indicate? A. they are used arbitrarily to indicate ownership as shown by the recorded deeds.

Q. And the numbering of the deeds, 1, 2, 3, 4, and so forth? A. Well, for the same purpose, of identifying the deed and the parcel that is described in that deed.

Q. In other words, that is an arbitrary number that you put upon the certified copies of the deeds that we have here? A. That is correct.

By the Master:

1385 Q. What do the letters indicate, F. G. N. and so forth? A. We have used those the same as the key down here, to show the apparent record owner.

By Mr. von Holst:

Q. In other words, you have marked a deed number one, is that right? A. Yes.

Q. And by that deed several parcels might be conveyed? A. That is correct.

The Master: Well, I still don't understand what the letters indicate. I didn't quite understand the witness's answer to that.

1386 Mr. von Holst: I am just coming to that.

By Mr. von Holst:

Q. And you have used those capital letters to identify what? A. The record owners.

Q. Well, you mean by that the parcels in the—— A. Various parcels in these deeds——

Q. Yes. A. —as described.

Mr. von Holst: If the Master please, when we get to the deeds—it is rather hard in this presentation to show everything at once,——

The Master: Yes.

Mr. von Holst: —but one deed may convey a number of parcels,——

The Master: Yes.

Mr. von Holst: —and this is just a method of identifying these deeds when we come to put them in.

The Master: Very well.

Mr. von Holst: I think it will be apparent as we go along.

By Mr. von Holst:

Q. Now, then, the colored pencil used in marking the deeds and parcels corresponds in color scheme to the key following the names at the bottom of the plat? A. Yes, sir. 1388

Q. Which in turn corresponds with the cross hatching scheme, color scheme, that you have already explained? A. That is correct.

Mr. von Holst: I offer in evidence as Amici Exhibit 40 deed from Charles L. Stokley and wife to John Wilkins Sawyer, dated June 4, 1929, and recorded June 5, 1929, conveying certain property in Lake County, Florida. That is a certified copy of the deed.

Mr. Harris: Well, Your Honor, of course, I object to this as incompetent, irrelevant and immaterial. 1389

The Master: I think you might state the connection that this has with the case, Mr. von Holst.

Mr. von Holst: Well, that shows, if the Master please, that on that date Sawyer—I mean Stokley conveyed that property to Sawyer.

The Master: Yes.

Mr. von Holst: Stokley conveyed it to Sawyer. Now, then, the next deeds will show that part of that same property, at least—I don't recall right now whether it is the whole thing—was later conveyed by Stokley to Kaufman, without any reconveyance by Sawyer.

1390 *Colloquy*

Now, the purpose of this is to show the nature of the so-called Stokley loan. That is, it has been advanced that the Stokley loan was a regular business transaction. Now, it is material we think in this connection to show the state of the title that was conveyed and to show that it does not savor of a business transaction such as careful lawyers and careful investors would indulge in, because the title was not clear, the title was outstanding in somebody else, and Stokley at the date of his subsequent conveyances to Kaufman had no record title whatsoever.

1391 Mr. Harris: Well, Mr. Master, as I recall the testimony here which you have been so good as to let us read, I understand you took from the records of the United States Attorney,——

The Master: Yes.

Mr. Harris: —it appears that these properties had been sold for taxes and that the town of Mount Dora had acquired title to them and that they were reconveyed by the town of Mount Dora to Kaufman.

Is that not a fact, Mr. von Holst?

Mr. von Holst: That is a fact as to certain of the property, but not all of it, because the record also shows that additional property was conveyed by

1392 Stokley to Kaufman to secure twenty-seven hundred dollars' worth of county taxes. Now, that property was not the subject of foreclosure by the town of Mount Dora.

Mr. Harris: Well, as I understand, the twenty-five thousand dollar loan—I mean the ten thousand dollar loan was for the purpose of purchasing from the town of Mount Dora property on which it had foreclosed the tax liens,——

Mr. von Holst: That is correct.

Mr. Harris: —and the town of Mount Dora conveyed that property directly to Mr. Kaufman, and

Mr. Kaufman agreed with Stokley that upon repayment of the loan and interest he would reconvey it to Stokley.

Mr. von Holst: That is right.

Mr. Harris: So that is the ten thousand dollar transaction. Now, these relate to another transaction, of twenty-seven hundred dollars of county taxes.

Mr. von Holst: In part they do, Mr. Harris. In other words, at the same time, if you will recall the testimony, or have it fresh in your mind,——

Mr. Harris: Not very fresh in my mind, I am 1394
sorry.

Mr. von Holst: —that the Stokley loan was made, or, rather, after the first conference, there was correspondence between Mr. Cooley and Judge Davis whereby the question of these twenty-seven hundred dollars of county taxes was raised. It was to secure that twenty-seven hundred dollars of county taxes that additional property was conveyed from Stokley to Kaufman.

Mr. Harris: Well, what was the loan from Kaufman to Stokley? Didn't he make a ten thousand dollar loan? 1395

Mr. Von Holst: Yes.

Mr. Harris: That was paid to the town of Mount Dora, isn't that right?

Mr. von Holst: That is right,

Mr. Harris: Just straighten me out once.

Mr. Von Holst: That is right,

Mr. Harris: And contemporaneously——

Mr. Von Holst: Yes.

Mr. Harris: —he advanced a further twenty-seven hundred dollars, is that right?

1396 *Colloquy*

Mr. von Holst: No, Stokley in that agreement agreed to pay these twenty-seven hundred dollars extra taxes.

Mr. Harris: Out of his own funds?

Mr. von Holst: Apparently it was arranged by Judge Davis that additional security would have to be given to Mr. Kaufman, because of this outstanding lien for county taxes, which was prior——

Mr. Harris: You mean against the same properties which the town of Mount Dora——

Mr. von Holst: That is right.

1397

Mr. Thiess: Right.

Mr. Harris: Do I understand—I wish Mr. Duncan would verify this, if you don't mind doing it, it is an informal way, because I don't know about it myself, whether after the town of Mount Dora acquired title to this property the county could tax the property in the hands of the municipality.

Mr. von Holst: I don't think Mr. Duncan is——

Mr. Harris: It is certainly generally the rule that when a town acquires title to property as a result of foreclosing a tax lien that the taxes are suspended on that until the property is again reconveyed to an

1398 individual owner.

Mr. von Holst: I think I can clear that up, that these taxes were outstanding before the foreclosure.

Mr. Harris: But the foreclosure wiped them out.

Mr. von Holst: Not the county taxes.

Mr. Harris: Not?

Mr. von Holst: These were merely city paving liens foreclosed.

Mr. Harris: So the town of Mount Dora owned the property subject to certain county taxes?

Mr. von Holst: That is right.

Mr. Thiess: One other thing that you ought to get in mind is that the agreement between Kaufman and Stokley was changed to put in this additional security.

Mr. Harris: Well, where did the twenty-seven hundred dollars come from for the county taxes? Was that advanced by——

Mr. Thiess: Stokely.

Mr. Harris: —Stokley himself?

Mr. von Holst: Mr. Stokley undertook to pay it and did pay it later on, in February,——

Mr. Harris: That is right. 1400

Mr. von Holst: —with a loan that was advanced to him by Judge Davis.

Mr. Harris: That was not part of the ten thousand dollar loan?

Mr. Thiess: But it was part of the agreement.

Mr. Harris: I understand that. So that in order to clear the title Mr. Stokley undertook to pay some county taxes which were a lien on the property held by the town of Mount Dora.

By Mr. Harris:

Q. Did the county have tax liens against this property in the hands of the town of Mount Dora? A. I didn't make a 1401 search for that purpose, so I don't know.

Q. You don't know? A. I can't answer that part; I don't know.

Mr. von Holst: The testimony will show that Mr. Cooley, the town attorney, raised this question of the twenty-seven hundred dollars additional taxes subsequent, just subsequent to the first meeting and conference in Judge Davis' Chambers.

The Master: What is the question? What is the question that was objected to?

1402 *Colloquy*

Mr. Harris: I think he offered this in evidence.

Mr. Thiess: The introduction of this.

Mr. Harris: Your Honor, I object to that on the ground, of course, there is nothing in the record yet to show anything about the Stokley transaction, anyway.

The Master: Yes.

Mr. Harris: But we all know that Stokley borrowed ten thousand dollars from Mr. Kaufman to repurchase certain lands from the town of Mount Dora. Now, this purports to relate to something which was
1403 not involved in that loan, and the witness himself says he has not examined the records, he doesn't know whether there was an outstanding tax lien in favor of the county against the properties title to which was in the town of Mount Dora.

The Master: Well, I think you are getting ahead of the story a little bit. This seems to be a preliminary question relating to a certain part of a very complicated transaction, that I assume will be followed up by other evidence connecting it with the Stokley transaction.

Mr. Harris: I also object to it as incompetent.

The Master: I overrule the objection.

1404 Mr. Harris: Why don't you identify this by letter, parcel and deed?

Mr. von Holst: You will find that is all done.

(Certified copy of deed dated June 4, 1929, from Charles L. Stokley and wife, Delta M. Stokley, to John Wilkins Sawyer, recorded in Deed Book 151 page 386 of the public records of Lake County, Florida, was marked Amici Exhibit 40.)

Mr. Harris: What is this indicated on the plat as?

Mr. von Holst: I was just going to proceed with this, Mr. Harris.

(Discussion off the record.)

By Mr. von Holst:

Q. Now, you have marked that deed "1", have you not? A. Yes, sir. This was written over it.

Q. The identification mark has been written over it? A. Yes.

Q. Supposing you put that "1" at the left there so it can be seen readily.

(The witness placed the figure 1 on Amici Exhibit 40.) 1406

By Mr. von Holst:

Q. Now, have you located parcel number 1 in deed number 1 on the plat? A. Yes, sir.

Q. And how have you located it on the plat? A. Do you want me to indicate where it is on the plat?

Q. Yes, read the legend on the plat that applies to deed number 1 and parcel number 1. A. Well, A, deed 1, parcel 1.

Q. Yes. A. Described as the east half of the east half of the northwest quarter of the southeast quarter of the southwest quarter of the northwest quarter of Section Twenty-nine, Township Nineteen South, Range Twenty-seven East. 1407

Q. Now, in making up this plat did you have before you these deeds? A. Yes, sir.

Q. And you plotted the plat from the descriptions in the deeds, is that correct? A. That is correct.

Mr. von Holst: Now, may I state there that rather than take the time at this hearing to have the witness elaborately trace out the description on the plat, I had him do that before he came here to testify and if there is any question on cross examination, of

course, that could be gone into, but I thought that would save time.

The Master: Yes.

Mr. von Holst: Inasmuch as he is skilled in doing that sort of thing.

By Mr. von Holst:

Q. Have you located parcel number 3 in deed number 1 on the plat? A. Yes, sir.

Q. And will you indicate what legend applies to parcel
1409 number 3? A. Letter B, deed 1, parcel 3.

Mr. Harris: Now, what deed is that in?

Mr. von Holst: Still deed number 1.

Mr. Harris: In 40?

Mr. von Holst: That is right.

Mr. Harris: All right.

Mr. von Holst: Now, I offer in evidence deed from C. L. Stokley to John Wilkins Sawyer, dated June 5, 1929, recorded July 8, 1929, conveying certain property in Lake County.

The Master: Now, I would suggest that these deeds be not copied in the record, but available for
1410 counsel to compare with the plan,——

Mr. Harris: That is right.

The Master: —so that you need not encumber the record with additional——

Mr. von Holst: Yes, by all means, Mr. Master, and we are furnishing counsel for Universal as we go along with photostatic copies of each of these deeds.

The Master: Very good.

Mr. Harris: And it will be noted that in this one which you are now marking, Amici Exhibit 41, Mr. Stokley's wife did not join.

(Certified copy of deed dated June 5, 1929, from C. L. Stokley to John Wilkins Sawyer, recorded in Deed Book 151, page 462 of the public records of Lake County, Florida, was marked Amici Exhibit 41.)

By Mr. von Holst:

Q. Referring to Amici Exhibit 41, you have marked that deed number 2, have you not? A. Yes, sir.

Q. And have you located the first parcel of deed number 2 on the plat? A. I have.

Q. And that is how indicated on the plat? A. As C, deed 1412
2, parcel 1.

Q. In what color? A. Blue.

Q. And have you located the fourth parcel of deed number 2 on the plat? A. I have.

Q. And how have you so indicated it? A. As D, deed 2, parcel 4, in blue, in Section 31.

Q. Have you located the ninth parcel of deed 2 on the plat? A. Yes, sir.

Q. How? A. E, deed 2, parcel 9, in blue.

Q. Now, does that ninth parcel contain an exception?

Mr. Harris: Wait a minute. Does the deed speak for itself on that? 1413

Mr. von Holst: I was just going to note it, where that excepted property is on the plat. It isn't very material. Are you objecting, Mr. Harris?

Mr. Harris: Well, you just want to call the Master's attention to certain exceptions?

Mr. von Holst: To the exception as noted on the plat.

Mr. Harris: And where is that in the deed? I would like to see it in the deed.

Mr. von Holst: The ninth parcel, it is the one-half acre heretofore deeded by Stokley to Jim Perry.

Mr. Harris: Yes.

1414 *W. L. Duncan—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Have you indicated that exception, or can you indicate where that excepted property is on the plat? A. Well, it isn't shown here on the plat, but it adjoins what is known as Highland Avenue, in the eastern part of this entire description as set up in number 9.

Q. And what part of the parcel have you cross hatched? A. Well, all of the west half of it, and parts of the east half of it.

Q. So that you have not cross hatched the exception, is
1415 that correct? A. I have not.

Q. In your recent search have you found any conveyance by John Wilkins Sawyer filed of record in Lake County subsequent to the deeds which you have just identified conveying or transferring to anyone the parcels of land which you have just located on the plat as blue A to blue E? A. I have made such a search, and I have not found any such deed.

Q. And that search was made when? A. Well, within the last ten days.

Mr. Harris: May I just informally ask Mr. Duncan whether or not these deeds are not in form that are frequently used in Florida for mortgages?

1416

By Mr. Harris:

Q. Don't you frequently have deeds absolute in form with an agreement to reconvey, where people borrow money on land? A. Well, I have seen that but I don't know that that is usual or unusual.

Q. That is true of part of the Kaufman and Stokley affair?

Mr. von Holst: Perhaps I better put one fact on the record——

By Mr. von Holst:

Q. Are you a lawyer, Mr. Duncan? A. No, sir.

Mr. Harris: I am glad you put that in.

Mr. von Holst: I would call Mr. Harris' attention to the fact that deed number 2 is signed by Delta Stokley.

Mr. Harris: Yes, I observed that.

Mr. von Holst: I offer in evidence a deed from the town of Mount Dora to Morgan S. Kaufman, dated November 25, 1935, and recorded the same day, conveying certain parcels of land in Lake County, Florida. 1418

Mr. Harris: That is a certified copy?

Mr. von Holst: That is a certified copy.

Mr. Harris: Can you tell me what was at the top here, that has been blacked out, Mr. von Holst?

The Master: Probably the preceding deed.

Mr. Harris: This is not a certified copy of the deed, it is a photostat of the record?

Mr. Neuman: Of the record, and certified by the clerk down there.

Mr. von Holst: Well, in the certification it says that the foregoing is a true copy of the deed.

Mr. Harris: As recorded:

Mr. von Holst: As recorded. 1419

Mr. Harris: Yes, that is what I say, it is a photostat of the record in the land office.

Mr. von Holst: Yes.

Mr. Thiess: But certified to.

Mr. Harris: Oh, I understand that; not of the deed itself.

Mr. von Holst: You say a certified copy of what?

Mr. Harris: I am making no point of it,——

Mr. Thiess: All right,

Mr. Harris: —except it is not a copy of the deed. It is a copy of the recordation of the deed.

1420 *Colloquy*

Mr. von Holst: Yes, which is, of course, the official record title in that county.

Mr. Harris: Well, now, that is a question of law.

The Master: I think that is so. It is so here.

Mr. Thiess: I have never seen it any other way.

Mr. Harris: As an explanation of why this was blacked out, it is probably, undoubtedly, as you explained, because it is a photograph of the——

Mr. Thiess: Of the page.

Mr. Harris: Of the liber of conveyances.

1421 The Master: Yes, it is duly certified, so I assume it is correct.

(Certified photostatic copy of deed dated November 25, 1935, between the Town of Mount Dora and Morgan S. Kaufman, recorded in Deed Book 172, page 411, of the public records of Lake County, Florida, was marked Amici Exhibit 42.)

Mr. Harris: By the way, Mr. von Holst, I notice on page 2 some handwriting, pencilled handwriting on the margin, which has been erased. Do you know what that is?

1422 Mr. von Holst: I am informed that those are some notes that we put on. They ought to be erased.

Mr. Thiess: They have been erased.

Mr. von Holst: We endeavored to erase them, but imperfectly.

The Master: Perhaps if you can decipher them it may give you some information that you want.

Mr. Harris: No, I don't want any information, I am not entitled to it.

(Discussion off the record.)

By Mr. von Holst:

Q. Now, will you locate the parcels described and conveyed in deed 3—and, by the way, that you have marked deed 3—— A. Yes, sir.

Q.—up in the righthand corner? A. Yes, sir. That is noted by the letters in red from F to Q, deed 3, parcels 12, and so on, 1, and so on.

Q. Parcels 1 to 13, both inclusive? A. 1 to 13, I believe is correct, yes, sir.

Mr. Harris: And what did you call that, deed 3?

Mr. von Holst: Yes. 1424

Mr. Harris: Parcels 1 to 13.

The Master: 12 and 13, is that?

Mr. Harris: 1 to 13, inclusive.

Mr. von Holst: I offer in evidence a quitclaim deed from C. L. Stokley and wife to Morgan S. Kaufman, quitclaiming the interest in the same property as conveyed in deed number 3, the quitclaim deed being dated November 25, 1935, and recorded the same day.

(Certified photostatic copy of quitclaim deed dated November 25, 1935, from C. L. Stokley and wife, Delta M. Stokley, to Morgan S. Kaufman, recorded in Deed Book 172, page 413, of the public records of Lake County, Florida, was marked Amici Exhibit 43.) 1425

Mr. Harris: Now, that is F to Q, inclusive, again, deed 4? You call this deed 4, or deed 3?

Mr. von Holst: This is deed 4.

By Mr. von Holst:

Q. Now, I refer you to Amici Exhibit 43, deed 4, and ask you if that is the same description, legal description, as in deed 3?

Mr. Harris: Oh, I object to that. Anyone could compare them. They speak for themselves.

Mr. von Holst: It merely makes the point clear on the record.

The Master: It is easier to hear him say it than to read it.

Mr. Harris: It doesn't do any good, we all compare them anyway.

The Witness: Do you want me to answer?

Mr. von Holst: Yes.

1427 A. Yes, they are the same description. I have compared them before.

By Mr. von Holst:

Q. You have compared them before? A. Yes, sir.

Mr. von Holst: I offer in evidence as Amici Exhibit 44 a quitclaim deed from John Wilkins Sawyer to the Town of Mount Dora, releasing and quitclaiming to the Town all interest of Sawyer in certain parcels described in deeds 3 and 4.

1428 (Certified copy of quitclaim deed dated July 31, 1935, from John Wilkins Sawyer and wife, Julia A. Sawyer, to Town of Mount Dora, recorded in Deed Book 172, Page 15, Public Records of Lake County, Florida, was marked Amici Exhibit 44.)

The Master: What was the date of that deed?

Mr. Harris: July 31st.

Mr. von Holst: July 31st, 1935.

Mr. Harris: That was before the deed from the Town of Mount Dora to Kaufman. That, again, is F to Q parcels, is that right?

Mr. von Holst: No, we will show it in just a moment. This is 4a. It is releasing and quitclaiming to the Town all interest of Sawyer in certain parcels described in deeds 3 and 4.

Mr. Harris: You call this 4a?

Mr. von Holst: This is deed 4a.

Mr. Harris: What parcels are they?

Mr. von Holst: I am just coming to that.

By Mr. von Holst:

Q. Referring to this deed, Amici Exhibit 44, which you have marked 4a, do the descriptions in this quitclaim deed by Sawyer include any of the property of Sawyer which you have located on the plat as parcels blue A to E? A. No, sir. 1430

Mr. Harris: Well, what letters do they cover? Would you mind giving us that, Mr. von Holst, on the plat? What letters and parcels does this deed purport to cover?

The Witness: Well, it covers most of it in red.

By Mr. Harris:

Q. Can you tell me what they are? Is F included? A. F is included. 1431

Q. How about G? A. G is included.

Q. H? A. 405—H is included.

Q. I? A. I is included.

Q. J? A. J is included.

Q. K? A. K is included.

Q. L? A. L is included.

Q. M? A. That is the last piece.

Q. So that F, G, H, I, J, K and L, and that is parcels what? A. Do you want me to repeat?

Mr. von Holst: You mean in the deed or on the plat?

Mr. Harris: On the plat. I am trying to orient this to the plat, like you have the other deeds. This is deed 4a.

Mr. Thiess: Those letters give you the parcels.

Mr. Newman: Your letters that you have enumerated there.

Mr. Harris: 1 to 7, inclusive, then?

By Mr. von Holst:

Q. Will you identify the parcels on the plat with the parcel numbers in the deed?

1433

Mr. Harris: I have got them all right, now, 1 to 7, inclusive.

The Witness: Those are the ones I just checked over. Shall I do it again?

Mr. von Holst: No. I offer in evidence a warranty deed from Charles L. Stokley and wife to Morgan S. Kaufman, dated November 25, 1935, and recorded the same day, conveying certain additional property in Lake County, as Amici Exhibit 45.

(Certified photostatic copy of warranty deed from Charles L. Stokley, and wife, Delta Stokley, to Morgan S. Kaufman, dated November 25, 1935, recorded in Deed Book 172, page 415, the public records of Lake County, Florida, was marked Amici Exhibit 45.)

1434

Mr. Von Holst: Can the Master refer to the photostat that I passed to counsel for Universal, to avoid passing the originals up to you?

The Master: Yes, that is all right.

By Mr. Von Holst:

Q. Now, will you locate parcel 1 of deed number 5 on the plat? You have indicated 5 on the first page of this deed, have you not? A. Yes, sir.

Q. And it does not appear because it is black on black?

A. No.

Q. I wonder if you would put 5 on the second page, the certification?

(The witness marked the figure 5 on the certification page of Amici Exhibit 45.)

Mr. Harris: What are these, R and S?

Mr. Von Holst: Just a minute.

By Mr. Von Holst: 1436

Q. Have you got the question? A. I wish you would read that again.

Q. Yes; will you locate parcel 1 of deed 5 on the plat? A. That is a group of negro tenant houses.

Mr. Harris: Well, strike that out. We just want to identify it on the plat—don't you—by symbols?

Mr. von Holst: Just show where it is indicated on the plat, Mr. Duncan.

The Witness: Now, I understand that that is located up here in Section 29, but I can't answer that positively.

Mr. Harris: Well, then, I object to the introduction—— 1437

By Mr. von Holst:

Q. Well, you have marked on this plat R, deed 5, parcel 1. A. This describes a group of nine negro tenant houses.

Q. Is there any legal description thereto? A. Well, right underneath it is the east half of the east half of the northwest quarter of the southeast quarter of the southwest quarter of the northwest quarter, 29, 19, 27. Now, that is the same as A, deed 1, parcel 1.

Q. And you have indicated it—— A. In blue.

Q. —on the plat as R, deed 5, parcel 1, have you not? A. Also noted under deed 5, parcel 1, same description, that is correct.

Q. And, therefore, you have indicated on the plat the cross hatching in red and blue? A. That is correct.

Q. On that area, is that correct? A. That is correct.

By the Master:

Q. Is that in the negro section of the town? A. Yes, sir, I know that to be in the negro section of Mount Dora.

1439 Q. Sort of a slum section, is it? A. Well, I don't know whether you would call it slum, it is just scattered houses out there in the northern part of the town where the negroes reside.

Q. Are those located on an alley or a street? A. Streets.

By Mr. von Holst:

Q. Now, referring then to red R, is it a fact from your search, and as indicated on this plat, that on November 25th, 1935, Charles L. Stokley and wife, according to the records of Lake County, did not have any interest in this parcel of land which they could convey to Morgan S. Kaufman?

1440 Mr. Harris: Oh, I object to that. That is expressing a legal opinion.

Mr. Von Holst: No, it isn't any such thing.

Mr. Harris: It certainly is.

Mr. von Holst: I am asking him whether the record title shows any legal interest.

The Master: Well, I think you can ask him whether there was any conveyance to these people, but whether or not they had any legal interest in it, I think that would be a legal question.

Mr. von Holst: All right, I will amend the question.

1441

By Mr. von Holst:

Q. Do the records of Lake County show as of November 25, 1935, record title in Charles L. Stokley and wife? A. No, sir, he had previously conveyed it to——

Mr. Harris: I object to that as hearsay.

The Master: I think that is a result of his examination of the official records of the Town.

By Mr. von Holst:

Q. What is your answer?

1442

Mr. Harris: I think the records are competent, but I don't think his testimony is.

The Master: It is a negative statement, based on his examination.

The Witness: Shall I answer the question?

The Master: Yes, you can answer it.

The Witness: Well, the title, the record title shows that he had previously conveyed that to John Wilkins Sawyer.

Mr. Harris: I object to it as incompetent, irrelevant and immaterial, and move to strike it out.

By Mr. von Holst:

1443

Q. And when you recently examined the record titles in Lake County was there any reconveyance of any kind by Charles Wilkins Sawyer to anyone? A. No, sir.

Q. John Wilkins Sawyer? A. No, sir.

Q. Now, will you locate parcel 2 of deed 5 on the plat? A. That is indicated on the plat as S, deed 5, parcel 2, in red.

Q. And with respect to that parcel or tract as noted on the plat, the record title on November 25, 1935, was in whom? A. John Wilkins Sawyer.

Q. And in your recent search had there been any reconveyance of any kind by John Wilkins Sawyer to anyone? A. No, sir.

1444 *W. L. Duncan—For Amici Curiae—Direct*

Q. And by "recent" I mean since November 25, 1935. A. That is correct, there has not been.

Q. At any time since the conveyance by Stokley to John Wilkins Sawyer had there been any reconveyance by John Wilkins Sawyer to anyone else? A. No, sir.

Mr. Harris: Well, of course, you each time refer to "of record".

Mr. von Holst: Of record.

By Mr. von Holst:

1445 Q. Now, will you locate parcel 3 of deed 5 on the plat? A. That is indicated in the letter T, deed 5, parcel 3, in red. That is the only piece in Section 31.

Q. And according to the record title which you have examined, on November 25, 1935, the record ownership of this parcel appeared in whom? A. John Wilkins Sawyer.

Q. And had there at any time ever been any reconveyance by John Wilkins Sawyer of that parcel to anyone? A. No, sir.

By the Master:

Q. If the property was sold for taxes would that appear on the record? A. Yes, sir, it would. You are speaking of
1446 State and county taxes, I suppose.

Mr. Harris: Well, any kind of taxes.

The Witness: Well, the city taxes are of record in the city records of Mount Dora.

By the Master:

Q. And there would be a conveyance from the sheriff to some new purchaser, would there, on record? A. That would appear on record, yes, sir, if there were a sheriff's deed.

Mr. von Holst: I offer in evidence as Amici Exhibit 46 a fruit picking agreement executed March 28,

1930 and recorded March 29, 1930, between C. L. Stokley and The Eustis Packing Company, made to secure an indebtedness of $10,090.33, and giving The Eustis Packing Company the right to pick and market the entire crop of citrus fruit for the years 1929 through 1933, and thereafter until the indebtedness is liquidated on the property described in the agreement.

(Certified photostatic copy of fruit picking agreement dated March 28, 1930, between C. L. Stokley and The Eustis Packing Company, recorded March 29, 1930, in Deed Book 154, page 66, of the public records of Lake County, Florida, was marked Amici Exhibit 46.) 1448

By Mr. von Holst:

Q. Now, referring to Amici Exhibit 46, you have marked that with the number 6, have you not? A. Yes, sir.

Q. Is that on the black? A. Yes, sir.

Q. Please put it on the white sheet immediately following, so it can appear.

(The witness marked the figure 6 on the certification page of Amici Exhibit 46.) 1449

By Mr. von Holst:

Q. Now, will you identify parcel 1 of instrument number 6 on the plat? A. That is indicated here in red, as block 419; in other words, just the east half of this is indicated on the plat.

Q. And that is indicated by what letter and what deed, and so forth? A. It is red H, deed 3, parcel 3.

Q. Then, as I understand it, parcel 1 of instrument number 6 is the same as part of H, deed 3, parcel 3 on the plat, is that correct? A. That is correct, practically the east half of it.

The Master: There is no deed 6 on the plat that I can see.

Mr. von Holst: No, Your Honor, 6 is not a deed, it is a fruit picking agreement. The point is that it covers part of the same property as is indicated on the plat as H, deed 3, parcel 3.

The Master: Yes.

Mr. Harris: Is this the property that was subsequently conveyed by the Town of Mount Dora to Morgan S. Kaufman, is that right, Mr. Von Holst?

Mr. von Holst: Yes.

1451

By Mr. Harris:

Q. And was this fruit picking agreement not wiped out by the acquisition of title to the property for the sale for taxes, Mr. Duncan?

Mr. von Holst: Now, I object to the interrogating of the witness on a question of law. He is not a lawyer. All that I have asked him about is what the record title shows.

Mr. Harris: And you want the record to show that that is all that he has testified to?

Mr. von Holst: The results of his search of the

1452 record title.

Mr. Harris: And none of the conclusions which are conclusions of law that he may have given are to be deemed to be testimony, do I understand that?

Mr. von Holst: I submit that he has made no conclusions of law, so far as I know.

Mr. Harris: But if he has——

The Master: Well, I don't think he has; at the time it was objected to and the objection was sustained.

Mr. Harris: Well, this man as an experienced title searcher, Your Honor, knows whether or not it is gen-

erally considered that a foreclosure of a tax lien wipes out such agreements as this fruit picking agreement. I think as a matter of convenience there is no reason why the witness should not inform us.

The Master: Well, I wouldn't know whether he would know or not.

Mr. Harris: Well, I would like to ask, to have him state——

The Master: You may ask him if he knows.

Mr. Harris: Yes. 1454

By Mr. Harris:

Q. Do you know, Mr. Duncan? A. In my opinion, it would.

Q. It would. A. Yes. That is my own personal opinion.

Q. It is not an interest in land, anyway, just a contract.

Mr. von Holst: I would like to call the Master's attention to the fact that the records will show, the testimony will show before this hearing is concluded, that the parties themselves never regarded that four thousand, was it?—whatever is secured by this instrument number 6, Amici Exhibit 46, as being wiped 1455
out, because that is the very debt which Judge Davis took care of by loaning Stokley four thousand dollars in March, 1936.

Mr. Harris: We didn't say it wiped out the debt, we simply said it wiped out any right to go on this property and take the fruit.

The Master: Well, after all, the witness is not a lawyer. He gave his opinion that that is so, but I don't know that that would affect me very much. You can show anything different.

1456 *By Mr. von Holst:*

Q. And will you read parcel 3 of this instrument on the plat?

The Master: Parcel 3 of which deed?

Mr. von Holst: Of the fruit picking agreement, Amici Exhibit 46.

A. That is indicated in blue, as C, deed 2, parcel 1—that includes the whole piece.

By Mr. von Holst:

1457 Q. It also includes red, does it not? A. Well, the blue extends over: That is the reason I said it included the whole piece. It also laps over on to O, deed 3, parcel 10.

Q. And parcel 4 of this same instrument includes red F, G, and I, does it not? A. Yes, it does.

Q. And parcel 5 of this same instrument includes yellow U and red L and K? A. It does.

Mr. von Holst: I offer in evidence a mortgage executed September 15, 1930, recorded September 17, 1930, by C. L. Stokley and wife to S. A. Gerrard Company of Florida, conveying certain property as guarantee for an indebtedness of $2,050.00, as Amici Exhibit 47.

1458 Mr. Harris: I object to that, Your Honor, as incompetent, irrelevant and immaterial.

The Master: Do you expect to connect that later with the Stokley loan?

Mr. von Holst: Yes.

The Master: I will admit it as a preliminary offer.

(Certified photostatic copy of mortgage dated September 15, 1930, from C. L. Stokley, and wife, Delta M. Stokley, to The S. A. Gerrard Co. of of Fla., recorded in Mortgage Book 62, page 317,

 1459

of the public records of Lake County, Florida, was marked Amici Exhibit 47.)

By Mr. von Holst:

Q. Now, you have marked this instrument 7 on the first page, have you not? A. Yes, sir

Q. Will you mark it 7 on the white page?

(The witness marked the figure 7 on the certification page of Amici Exhibit 47.)

1460

By Mr. von Holst:

Q. Now, referring to that instrument, Amici Exhibit 47, does the property conveyed by this mortgage include yellow U and red L and K on the plat? A. It does.

Mr. von Holst: I offer in evidence a mortgage executed April 11, 1932, recorded April 26, 1932, by John Wilkins Sawyer, to the Eustis Packing Company, to secure an indebtedness of $2,050.00, as Amici Exhibit 48.

(Certified photostatic copy of mortgage dated April 11, 1932, from John Wilkins Sawyer to The Eustis Packing Company, recorded in Mortgage Book 64, page 65 of the public records of Lake County, Florida, was marked Amici Exhibit 48.) 1461

By Mr. von Holst:

Q. You have marked this instrument number 8? A. Number 8.

Q. In the upper right hand corner? A. Yes, sir.

Q. Now, does this instrument cover the same property as that covered by the preceding mortgage, Amici Exhibit 47, and which you have marked instrument 7, and does it include yellow U and red L and K? A. It does.

1462 *W. L. Duncan—For Amici Curiae—Direct.*

Q. It does cover the same property—— A. Yes, sir.
Q. —as the instrument marked 7? A. It does.

Mr. von Holst: I offer in evidence as Amici Exhibit 49 a satisfaction of the mortgage by Stokley and wife to S. A. Gerrard Company, already offered in evidence as Amici Exhibit 47, this satisfaction being dated February 10, 1936, and recorded March 19, 1936.

(Certified photostatic copy of satisfaction of
1463 mortgage dated February 10, 1936, from The S. A. Gerrard Company of Florida to C. L. Stokley and wife, Delta M. Stokley, recorded in Satisfaction Book 25, page 253 of the public records of Lake County, Florida, was marked Amici Exhibit 49.)

Mr. von Holst: I have no questions to ask the witness on some of these.

I offer in evidence a general release by The S. A. Gerrard Company of Florida to Charles L. Stokley and wife, executed February 10, 1936, and recorded March 19, 1936, as Amici Exhibit 50.

(Certified photostatic copy of general release
1464 from The S. A. Gerrard Company of Florida to Charles L. Stokley, and wife, Delta M. Stokley, dated February 10, 1936, recorded in Deed Book 173, page 382, of the public records of Lake County, Florida, was marked Amici Exhibit 50.)

Mr. Harris: That covers the same property mentioned in 47, does it?

Mr. von Holst: It is merely a release of the Gerrard Company loan.

Mr. Harris: Well, that is the one I was describing, 47, isn't it?

Mr. von Holst: I offer in evidence the satisfaction of mortgage by The Eustis Packing Company, satisfying the Sawyer mortgage offered in evidence as Amici Exhibit 48, and identified by the witness as instrument number 8, this satisfaction being executed February 11, 1936, and recorded March 19, 1936, as Amici Exhibit 51.

(Certified photostatic copy of satisfaction of mortgage from The Eustis Packing Company to John Wilkins Sawyer, dated February 11, 1936, recorded in Satisfaction Book 25, page 252, of the public records of Lake County, Florida, was marked Amici Exhibit 51.) 1466

Mr. von Holst: I offer in evidence a general release by The Eustis Packing Company to Charles L. Stokley and wife, executed February 11, 1936, and recorded March 19, 1936, as Amici Exhibit 52.

(Certified photostatic copy of general release from The Eustis Packing Company to Charles L. Stokley, and wife, Delta M. Stokley, dated February 11, 1936, recorded in Deed Book 173, page 381, of the public records of Lake County, Florida, was marked Amici Exhibit 52.) 1467

Mr. von Holst: I offer in evidence a release by the Eustis Packing Company of its fruit picking contract with C. L. Stokley, offered in evidence as Amici Exhibit 46, identified by the witness as instrument number 6, this release being executed the 11th day of February, 1936 and recorded March 19, 1936.

The Master: Did that contract cover several years, or just one year?

Mr. von Holst: Several years.

The Master: Several years.

1468 *W. L. Duncan—For Amici Curiae—Direct*

(Certified photostatic copy of release of contract from The Eustis Packing Company to D. L. Stokley, dated February 11, 1936, recorded in Deed Book 173, page 383, of the public records of Lake County, Florida, was marked Amici Exhibit 53.)

Mr. von Holst: I offer in evidence warranty deed from Charles L. Stokley and wife to J. Warren Davis, dated February 27, 1936, and recorded March 31, 1936 as Amici Exhibit 54.

Mr. Harris: What date?

1469 Mr. von Holst: Dated February 27, 1936, and recorded March 31, 1936.

Mr. Harris: I certainly object to this. I don't understand the relevancy of this, Your Honor, deed from Stokley to Judge Davis.

Mr. von Holst: I think the relevancy of it will immediately appear, as soon as we ask the next questions of the witness.

The Master: I think that would be relevant as part of the transaction. What property did that cover?

Mr. von Holst: I am just coming to that, if Your Honor pleases.

1470 (Certified photostatic copy of warranty deed from Charles L. Stokley, and wife, Delta M. Stokley, to J. Warren Davis, dated Febuary 27, 1936, recorded in Deed Book 173, page 469, of the public records of Lake County, Florida, was marked Amici Exhibit 54.)

By Mr. von Holst:

Q. Now, referring to Amici Exhibit 54, you have marked that instrument 12 in the upper righthand corner? A. Yes, sir.

1471

Q. Will you locate the property conveyed in this deed
n the plat? A. That is indicated on the plat as yellow Q,
eed 12, parcel 1.

By the Master:

Q. What kind of a property was that, Mr. Duncan? A. I
lon't know whether I can identify this particular piece, but
Mr. Stokley at one time owned a grove property all through
his section?

Q. Was that in the Town of Mount Dora? A. Within the
town limits, yes, sir.

1472

Q. Not on a main street? A. No, sir.

Q. Was it an orange grove, or a business property, or
what? A. Well, out in there it would be an orange grove.
Now, I am not saying it is an orange grove or not, I can't
positively identify it, but it is way outside the business
district.

Q. What size was that? A. Approximately two acres and
a half.

Q. Two acres and a half.

By Mr. von Holst:

Q. Now, as of February 27th, 1936, the record title of
yellow U on the plat was in whom? A. It was in John Wil- 1473
kins Sawyer.

Q. And in your searching of the records did you find at
any time any conveyance whatsoever by John Wilkins Saw-
yer of the property indicated by yellow U? A. No, sir.

The Master: Who made the conveyance to Judge
Davis?

Mr. Harris: Stokley.

The Master: Stokley.

Mr. von Holst: The point being, Your Honor, that
he had already conveyed it, according to the records,
to John Wilkins Sawyer.

1474

The Master: Yes.

Mr. von Holst: I offer in evidence a certified copy of the agreement between Morgan S. Kaufman and Charles L. Stokley covering the purchase by said Kaufman for $10,000 of the property foreclosed by the Town of Mount Dora, the agreement by Stokley to convey additional security, and the agreement by Kaufman to reconvey all of the property upon the payment in full of the money advanced by him. This agreement bears date of November 25, 1935, is acknowledged by Kaufman on March 18th, 1937, and recorded

1475

March 24, 1937.

Mr. Harris: You are not testifying, you are just reading from the document, aren't you?

Mr. von Holst: Just identifying, that is all. That is offered as Amici Exhibit 55.

(Certified photostatic copy of agreement between Morgan S. Kaufman and Charles L. Stokley, and wife, Delta Stokley, dated November 25, 1935, recorded in Deed Book 178, page 602, of the public records of Lake County, Florida, was marked Amici Exhibit 55.)

1476

Mr. von Holst: May I ask the Master if we may have the policy of title insurance issued by the Title & Trust Company of Florida on this Stokley property at the time of the conveyance by Mount Dora to Kaufman?

The Master: I did have it. I am not sure whether I still have it or whether at the request of the Masters I handed it back to them.

(Discussion off the record.)

The Master: I think we returned that to Mr. Ringe, who was one of the three Masters, who wanted to attach

1477

it to their report. Now, I am asking Mr. Bull to check up on it, and he will let us know, and if it is attached to the Masters' report we can produce it, probably this afternoon.

Mr. Harris: Well, now, did you want to do anything more than have this witness identify it as having been issued by his company as issuing agent? If that is all you want, I will concede that.

Mr. von Holst: There is a further point in connection with this title guarantee policy, and that is that the title guarantee policy does not cover all the property that was conveyed from the Town of Mount Dora 1478
to Kaufman.

The Master: Well, we can undoubtedly get it and have it offered in evidence later, and I understand Mr. Harris concedes its authenticity.

Mr. Harris: Subject to examination and correction, of course.

The Master: Yes.

Mr. von Holst: Well, I suppose that the point that I just made will appear from the title guarantee policy itself.

The Master: I would suppose so.

Mr. von Holst: I thought it would be clearer on 1479
the record if the witness pointed out on the plat what portions of the property conveyed by the Town of Mount Dora to Kaufman were not covered by that policy.

Mr. Thiess: Well, if we could have the policy available this afternoon he could so point out. Let him go for the time being, and recall him this afternoon.

The Master: You could point it out yourself, probably, couldn't you?

1480

Colloquy

Mr. von Holst: I think so. The second point is, it does not cover the additional security, you understand what I am referring to there, that was conveyed to secure this twenty-seven hundred dollars' worth of county taxes, the guarantee policy does not cover that, and does not cover all of the property conveyed by Mount Dora to Kaufman.

Mr. Harris: Well, I think I would like to ask Mr. Duncan some questions about it. Maybe we can find out now the things that occur to me.

1481

Mr. von Holst: Just a second, you want to cross-examine?

Mr. Harris: I might clear it up in one or two questions here, that have just been raised.

Mr. von Holst: Let me, just before you begin,——

Mr. Harris: All right.

Mr. von Holst: —offer in evidence the plat heretofore identified by the witness, as——

Mr. Thiess: Exhibit 39.

Mr. von Holst: I will offer it as Amici Exhibit 39 in evidence, the same number as it was marked for identification.

The Master: I will receive it in explanation of the

1482

deeds which have been offered.

Mr. Harris: Subject to my objection.

The Master: Subject to your objection.

(Plat prepared by W. L. Duncan, previously marked Amici Exhibit 39 for identification, was marked Amici Exhibit 39.)

Mr. von Holst: Direct examination closed, subject to recalling the witness for examination on the title guarantee policy, if it can be produced.

Mr. Harris: Well, if you are going to examine on that I will wait for my cross-examination until you have examined him.

The Master: Well, then, perhaps you can get through with your Chicago witness.

Mr. Harris: That is right.

Mr. von Holst: Well, now, we have Mr. Herrell, who is from Battle Creek, and he will be very short.

(Discussion off the record.)

W. C. HERRELL, having been duly sworn, was examined and testified as follows: 1484

Direct Examination by Mr. von Holst:

Q. Please state your name. A. W. C. Herrell.

Q. Your residence? A. Now, 179 Oaklawn Avenue, Battle Creek, Michigan.

Q. What is your occupation? A. Chief clerk, Battle Creek Sanitarium.

Mr. Harris: Mr. Herrell, little louder, please.

The Witness: Chief clerk, Battle Creek Sanitarium.

By Mr. von Holst: 1485

Q. That is at Michigan? A. That is right.

Q. And when did you enter the employ of the Battle Creek Sanitarium? A. First week in June, 1941.

Q. Were you—— A. 1942, excuse me.

Q. Were you previously employed at the Battle Creek Sanitarium at Miami Springs, Florida? A. Yes, sir, known as The Miami-Battle Creek.

Q. Known as The Miami-Battle Creek Sanitarium? A. No, the "Sanitarium" was left out.

Q. Oh, it was left off? A. It was just Miami-Battle Creek.

1486 *W. C. Herrell—For Amici Curiae—Direct*

Q. That is at Miami Springs, Florida? A. That is correct.

Q. Has this Miami-Battle Creek any connection with the Battle Creek Sanitarium at Battle Creek, Michigan?

Mr. Harris: Now, I object to that. I don't think this witness is shown to be qualified to testify to the legal relationship between the places.

The Master: Well, it isn't an important question, I don't think.

Mr. Harris: Well, I object to it as unimportant,
1487 then, and therefore immaterial.

The Master: Do you consider it an important matter?

Mr. von Holst: I think that there is a certain importance. It may or may not develop.

By the Master:

Q. Well, you were an employee of the Battle Creek—what do you call it, Miami-Battle Creek? A. That is right.

Q. And were you transferred from there by your employer to Battle Creek, Michigan? A. That is right.

Q. And therefore also were under the same management,
1488 both of them were under the same management? A. If you will permit me, there is no business connection between the two firms. Dr. Kellogg, who is the founder of the Battle Creek Sanitarium, established The Miami-Battle Creek.

Q. I see.

(Discussion off the record.)

By Mr. von Holst:

Q. When did you first enter the employ of Miami-Battle Creek, at Miami Springs, Florida? A. November 1st, 1933, or the first week in November.

Q. Did you work at the Miami-Battle Creek during the winter season of 1933 and 1934? A. Yes, sir.

Q. In what capacity were you employed? A. Bellman.

Q. Speak a little louder. A. Bellman.

By Mr. Harris:

Q. Bell boy, that is, an attendan , a bell boy, is that right, what is ordinarily called a bell boy? A. That is right.

Mr. Harris: All right, sir.

By Mr. von Holst. 1490

Q. Did you subsequently occupy any other position there? A. No, bell boy through the first season. I was clerk beginning the next season.

Q. That is what I mean. A. Yes, sir.

Q. You were clerk—— A. That is right.

Q. —at Miami-Battle Creek in what season? A. Beginning the season 1934 and '5, winter season.

Q. Now, what were your duties as bell boy? A. Checking guests in and out, running service calls of various kinds.

Q. And what were your duties as clerk? A. Registering guests, quoting rates, sometimes help with the billing, during slow time.

Q. Now, you were served with a subpoena to appear here 1491
this morning, were you not? A. Yes, sir.

Q. And will you produce the documents called for in paragraph 1 of that subpoena, being the ledger sheets?

The Master: Of what?

Mr. von Holst: I was just going to ask that question.

By Mr. von Holst:

Q. These ledger sheets, yellow ledger sheets that you have before you, are what? A. They are duplicates of the original

guest—what we term our guest ledger, or the guest bill. The guest was given the original.

Q. At Miami-Battle Creek? A. That is right.

Q. Now, on these ledger sheets that you have before you, from what is the heading made up? A. Name, room number, rate and time of arrival, as taken from the guest register card.

At the earlier years it was taken from the guest register sheet; used to use the sheets instead of the cards.

Q. How is the room charge posted on these ledger sheets, that is to say, how often is it posted? A. That is posted
1493 each morning for the previous day.

By Mr. Harris:

Q. "Is"; you mean "was", during the entire period—— A. That is right.

Q. —that you are testifying—— A. That is right, each morning the books and charge slips were corrected to the previous day.

By Mr. von Holst:

Q. Now, other charges that appear upon these ledger sheets, such as telegrams, medical examinations, medicine,
1494 and so forth, from what were they entered? A. Either from charge slips, doctors' books, or telegram charge sheets, posted daily, as the regular room charge was posted.

Q. Now, what was the purpose of keeping these ledger sheets?

Mr. Harris: Oh, I object to that. I don't know what the purpose of it is, except to bill the customer.

The Master: I guess that is the answer, isn't it?

Mr. von Holst: If the Master please, I offer to prove by the witness that the ledger sheets that he has before him were kept by Battle Creek at Miami Springs as their record.

The Master: For the purpose of billing the customer.

Mr. von Holst: Yes.

The Master: That is just what Mr. Harris said. That is correct, I presume.

By the Master:

Q. Is that your answer? A. Yes, sir, just as any bookkeeping record.

Q. Yes. A. It was our original—in case any question—— 1496

Q. Yes. A. —about a bill——

By Mr. von Holst:

Q. Now, have you made a search for the registration sheets which you have said certain of the data on these ledger sheets was compiled from? A. Yes, sir.

Q. And did you also look for the charge slips? A. Yes, sir.

Q. And what was the result of your search? A. They are not to be found.

Q. Now, referring to the ledger sheets which you have before you, in whose custody have they been since they were 1497
first made up? A. Our files at Miami-Battle Creek.

Q. Until what time? A. As I recall, it was the fall of 1939 or the early part of 1940.

Q. And what was done with them then? A. Federal Bureau of Investigation called for them.

Q. And were they surrendered to the Federal Bureau of Investigation—— A. Yes, sir.

Q. —at that time? How did they get back into your possession? A. By our request.

Q. And they sent them back to you? A. That is right.

1498 Q. Did they send all of them back? A. No, there is two or three items missing which we requested and haven't yet received.

Q. Did you keep a record of the ones that you turned over? A. We recorded on the envelope which we submitted to them the dates of the ledger sheets which we surrendered to them.

Q. Have you those envelopes? A. Yes, sir.

Q. And when you said that there are some missing, it is because you have checked the ones returned with the nota-
1499 tion that you made on those envelopes—— A. That is right.

Q. —at the time you delivered them to the F. B. I.? A. That is right.

Q. Now, referring to the season of 1933 and 1934, will you refer to the ledger sheets which you have before you for that season with respect to Mr. David Kaufman and state the date of his arrival at the Sanitarium, the room that he occupied, and the date of his departure.

Mr. Harris: I object to that. I don't see what Mr. David Kaufman's presence can possibly have to do with this. I think we are accepting too much evi-
dence subject to connection, and some foundation
1500 should be laid for some of this evidence, Your Honor.

Mr. von Holst: May I suggest, Your Honor, that it is the old problem, that you can't prove the hen until you prove the egg, and you can't do it vice versa, either.

Mr. Harris: You could certainly have proved something before you put in all these deeds today, in my opinion, and I don't know what David Kaufman has to do with this, and unless there is some connection shown between David Kaufman and Judge Davis on this case and Universal, I object to it as incompetent, irrelevant and immaterial in every respect. I am serious about this.

Mr. von Holst: There is evidence before the Master that David Kaufman and Morgan Kaufman shared their fees.

Mr. Harris: I don't recall any such evidence.

Mr. von Holst: There is further evidence——

Mr. Thiess: There will be evidence to that effect.

Mr. von Holst: Well, there is evidence which the Master has read.

Mr. Thiess: There is the Grand Jury testimony, which you have examined.

Mr. Harris: The Master has also held that is not binding on us. 1502

Mr. von Holst: There is also evidence that will be adduced to show intimacy of Morgan Kaufman and David Kaufman with Judge Buffington and with Judge Davis, and that aspect of the case we regard as material.

Now, we have, of course, the problem of how, or in what order to present the proof. Now, it has been deemed more expedient at this hearing to examine Mr. Herrell in advance of calling Judge Davis and any other witness.

Mr. Harris: I think it should be just the other way, Your Honor, that we really should not be forced to litigate this until we know whether they can establish some connection between Universal and Judge Davis and Kaufman. It is preposterous—— 1503

The Master: Well, of course, there is testimony that was taken before the Grand Jury that does indicate that the two Kaufmans were in partnership, in the sense that they were sharing fees, and I assume that that evidence will be later produced in some form which we can rely upon. I will permit the examination.

1504 *W. C. Herrell—For Amici Curiae—Direct.*

Mr. von Holst: Will you read the question to the witness?

Mr. Harris: Without showing any connection between those persons and [illegible]niversal, or any facts from which that can be properly inferred?

The Master: I assume it will be followed up, and, of course, I am not a jury, and if it is not followed up I can disassociate my mind from it.

Mr. Harris: All right.

Mr. von Holst: Now, will you read the question to the witness, please?

1505 (The question was repeated by the reporter as follows:

"Q. Now, referring to the season of 1933 and 1934, will you refer to the ledger sheets which you have before you for that season with respect to Mr. David Kaufman and state the date of his arrival at the Sanitarium, the room that he occupied, and the date of his departure.")

A. Arrived January 14th, had room 218.

By the Master:

1506 Q. What year was that? A. 1934.

Mr. Harris: Of course, I object to this as incompetent evidence also, Your Honor.

The Master: You mean incompetent——

Mr. Harris: It is not properly proven.

The Master: Well,——

Mr. Harris: Here is a man who has no independent recollection and whose recollection is not refreshed, reading into the record or putting into the record the documents themselves, some documents which I say are not properly authenticated and which

he did not keep and which he has not been shown to be familiar with, pure hearsay.

Mr. von Holst: We could offer the ledger sheets themselves in evidence and thereby encumber the record a great deal, and it seemed to us——

Mr. Harris: I don't think the ledger sheets are proper proof.

By the Master:

Q. Mr. Herrell, these sheets were kept daily, as I understand it? A. That is right. 1508

Q. And items were entered upon them from notations, from the telephone call, or the amount of the charge for daily—— A. That is right.

Q. Daily staying at the Sanitarium, and any other incidental charges? A. That is right.

Mr. Harris: Well, this man was nothing but a bell boy, Your Honor.

The Master: At that time.

Mr. Harris: At that time.

Mr. Thiess: He was a clerk in '34 and '5.

Mr. Harris: He didn't keep the records, the financial records of the company. He registered people in and out and occasionally he wrote up some of these things, but he didn't write these particular ones, and in January, 1934 he was a bell boy. 1509

By Mr. Harris:

Q. Weren't you? A. That is right, winter of '33 and '34.

Mr. Harris: He says he was.

By the Master:

Q. When did you become a clerk? A. Following season.

1510 Q. Are you familiar with the records of this company? A. Yes, sir.

Mr. Harris: Even as a bell boy? I don't see how he could be.

By the Master:

Q. Are these records that were normally kept there by various clerks—— A. Yes, sir.

Q. —in connection with the Sanitarium? Did you yourself ever keep these records or did you simply have them——

1511 A. No, I have in recent years.

Q. I beg your pardon? A. I have in recent years.

By Mr. Harris:

Q. Not at that time? A. Not at that time, I didn't keep these records.

By Mr. von Holst:

Q. Do you know who did keep them? A. Yes, sir.

Mr. von Holst: Well, now, if the Master please, I can have the witness state in whose handwriting these ledger sheets appear.

1512 The Master: Suppose you ask him that.

By Mr. von Holst:

Q. In 1934 who was the billing clerk? A. Bernice Smith.

Q. Spell that. A. B-e-r-n-i-c-e.

Q. Man or woman. A. Man.

Q. And in 1934 the records that you have before you are in whose handwriting? A. Smith.

By Mr. Harris:

Q. All of them? A. Yes, sir, they are all in Smith's, that is right.

By Mr. von Holst:

Q. That is, for the season 1934-35, is that right? A. That is right,—33 and '34:

Q. '33 and '34, and in 1935 and '6, that is the season of 1935 and 1936—oh, yes, 1934 and 1935, take that next, in whose handwriting are they, the season of 1934 and 1935? A. That is Mrs. Virginia Curtis.

By the Master:

Q. Who is she? A. She was at that time the billing clerk. She posted the charges. 1514

By Mr. von Holst:

Q. Now, are any of those—are all the entries in that season, 1934 and 1935 in the handwriting of Mrs. Curtis? A. That is right.

Q. Now, what about the season 1935 and 1936? A. Mrs. Curtis died during that season, and a Mrs. Allard took over, I believe that was the year, and finished up.

Q. How do you spell Allard? A. Edith Allard, A-l-l-a-r-d.

Q. What was her position at that time? A. She took over the position as billing clerk, posting the charges. She was also doing the bookkeeping. As I recall, it was towards 1515
the end of the season, and she doubled up and took this work for a short time.

Q. And in 1937? A. Smith returned in 1937.

Q. And you identify the handwriting of all those you have named on these ledger sheets? A. Yes, sir.

Mr. von Holst: May I confer a minute?

If the Master please, we offer in evidence the ledger sheets produced by the witness and identified by him, comprising some seventy-five pages, as Amici——

Mr. Harris: Just a moment. Now, I want to state my objection.

1516

The Master: Yes.

Mr. Harris: Have you finished your offer? I don't think that the testimony anywhere approaches fulfilling the requirements of the shop book rule, Your Honor. We don't have that rule in the New York State courts, and my recollection is somewhat hazy, but my recollection is that among the elements are to account for the non-production of the person who made the records, show that they cannot be produced, show that these books were kept in the ordinary course, which obviously this witness is in no position to testify to because he was not in a position to know, to show that they were honestly kept, and had the reputation of being honestly kept by persons who are in a position to know, and, of course, a person who was not a guest at the hotel could not know that; and there may be other elements that I don't recall, but I am quite sure these are not—and show that the entries were made contemporaneously.

1517

Mr. von Holst: That has been shown.

Mr. Harris: That this witness cannot show of his own knowledge, except based upon his guess, because of what may have gone on in subsequent years. It seems to me that if this is going to be admitted we ought to have the privilege of cross-examining the person who made the entries.

1518

Mr. von Holst: May we refer briefly to the Federal Rule on the subject, Mr. Master?

Mr. Harris: The old shop book rule may have been modified,——

Mr. von Holst: It has been.

Mr. Harris: —but I don't recall.

The Master: Nearly everything has been.

Mr. Harris: Nearly everything has been.

(Discussion off the record.)

Mr. Harris: I don't really understand why you didn't bring the bookkeepers up, anyway; just as easy to get as Mr. Herrell, cost you no more to entertain them than Mr. Herrell.

By the Master:

Q. When you were room clerk, Mr. Herrell, did you have anything to do with making these entries? A. Yes, I often did. Our place is so small down there that there is only three of us in the office at a time, and we all pinch-hit sometime or other. 1520

By Mr. Harris:

Q. That is when you were a clerk, when you were a clerk? A. That is right.

By Mr. von Holst:

Q. Are you the present custodian of these ledger sheets? A. Yes, sir.

By Mr. Harris:

Q. When did you make your first entry on any of these bills, what year? A. I couldn't say that. 1521

Q. Will you look through them and see if you made any entries in any of these bills? You have looked through them, haven't you? A. No, I made no entries then.

Q. On these bills that are proffered? A. That is right.

The Master: Well, it is one minute of one, perhaps we might as well adjourn until two o'clock, and then find the rule in the meantime.

(Recess, 12:59 until two o'clock P. M.)

1522 *W. C. Herrell—For Amici Curiae—Direct*

AFTER RECESS

Present: Counsel as before noted.

W. C. HERRELL, recalled.

Direct Examination (Continued):

The Master: The Rules of Civil Procedure refer
1523 to the State laws on all questions of admission of evidence, and the Act of 1936, known as the Uniform Business Records as Evidence Act of Pennsylvania provides that a record of an act, condition or event in so far as relevant shall be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event, and if in the opinion of the Court the sources of information, method and time of preparation was such as to justify its admission.

Mr. Harris: May I see that?

1524 The Master: Yes. Have you something there?

Mr. von Holst: Yes, this is the Federal rule, and I understand that the Rules of Civil Procedure provide that if evidence is competent on either Federal or State practice that it will be received.

Mr. Harris: Where did you get that?

Mr. von Holst: Federal Rules of Civil Procedure.

The Master: Yes, that is in the Federal Rules, and it has been held by the Pennsylvania courts that it is not necessary to produce the person who made the record if it is in the opinion of the court sufficiently identified.

1525

Mr. Harris: Well, now, Your Honor, first, it must be produced by—first, it must be a record of an act, condition or event. I don't know whether this is or not. You know better about whether this comes within the Pennsylvania interpretation of an event. Now, I don't know, it certainly is not an act or a condition. But assuming that it does, then there must be the custodian or other qualified witness. Now this man was not the custodian at the time. The fact that he may be the custodian now, under circumstances that will have to be brought out under cross-examination, does not make him a custodian at the time.

1526

He certainly is not a qualified witness because he made none of the entries, saw none of them made, and wasn't even in the clerical force at the time they were made.

Mr. von Holst: The statement that he saw none of them made is not accurate.

Mr. Harris: Why?

Mr. von Holst: Because he says——

Mr. Harris: It certainly is accurate.

Mr. von Holst: —he saw some of them made.

Mr. Harris: He saw some of these made?

1527

Mr. von Holst: Yes.

Mr. Thiess: Yes.

Mr. Harris: Well, he certainly did not testify, that is something that has occurred since his prior testimony, it is not in the record.

Mr. von Holst: I submit that it is in the record.

Mr. Harris: And, furthermore, how can this man testify that they are made in the regular course of business? In order to do that a person has got to have some information based upon his relationship to the business or enterprise or course of events, and a bell boy, honorable profession though it is, is certainly

1528 *Colloquy*

not in a position to testify how the books are kept of a hotel.

Now, it is significant to me that no attempt has been made to produce the people who made these records and who were familiar with them. Now, I certainly object that no proper basis has been laid for the introduction of these in evidence.

The Master: The Federal Act on the subject is also relevant. It says that in any court of the United States and in any court established by Act of Congress any writing or record, whether in the form of
1529 an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of said act, transaction, occurrence or event if it shall appear that it was made in the regular course of any business and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but it shall not affect its admissibility.

1530 Well, I will overrule the objection and admit the exhibit identified by the witness.

Mr. von Holst: We offer it, then, as Amici Exhibit 56, comprising seventy-five sheets. If the Master please, I don't think it will be necessary to give a separate mark to each ledger sheet.

The Master: I should think you could mark them all as one exhibit. I don't think it is necessary to go into extensive examination over them, unless you see fit to do so, as both sides will have them before them for comment in their memoranda.

(Seventy-five ledger sheets of Battle Creek, Incorporated, Miami Springs, Florida, and The

Miami-Battle Creek, Miami Springs, Florida, were marked Amici Exhibit 56.)

By Mr. von Holst:

Q. Mr. Herrell, can you state which two sheets are missing? A. It is the ledger sheets of the last week in February, 1936, for both Judge J. Warren Davis and Mr. Morgan Kaufman.

Mr. Harris: I object to that as incompetent and immaterial, and move to strike it out.

The Master: I think that may be material. 1532

By the Master:

Q. Do you know where they are?

Mr. Harris: Incompetent, I think.

A. They should be still in the possession of the F. B. I.

Mr. Harris: I object to that.

A. (Continued) They were not returned to us.

Mr. Harris: I move to strike it out.

A. (Continued) We requested them and haven't had time 1533 to have an answer from them.

By the Master:

Q. You haven't had time to have an answer? A. Maybe I should say, we haven't had an answer.

By Mr. von Holst:

Q. When did you write the F. B. I. asking for the return of these two sheets? A. Without having the letter I don't believe I can tell you the exact date.

1534 *W. C. Herrell—For Amici Curiae—Direct*

Q. Well, can you tell approximately? Was it a week ago or two weeks? A. I would say probably two weeks.

The Master: Were those entries that are missing included in the record of the trial of these cases in the District Court?

Mr. von Holst: They were introduced in evidence, I understand, in the second trial.

By Mr. von Holst:

Q. Now, during the time that you were in the employ of
1535 Miami-Battle Creek, Miami Springs, Florida, did you meet a man named David Kaufman? A. Yes, sir.

Mr. Harris: I object to that as immaterial and irrelevant.

The Master: Overruled.

By Mr. von Holst:

Q. Did you meet a man named Morgan S. Kaufman? A. Yes, sir.

Q. Did you meet a man named J. Warren Davis? A. Yes, sir.

Q. Did you meet a man named Joseph H. Buffington? A.
1536 Yes, sir.

Q. Now, about when was this that you first met David Kaufman? A. It was during the season of 1933 and '34.

Q. And how did you come to meet him? A. I checked him in.

Q. Was he alone? A. No, sir.

Q. With whom was he? A. Judge Joseph Buffington.

Mr. Harris: I object to that as irrelevant and immaterial.

The Master: Was that David or Morgan Kaufman?

Mr. von Holst: David.

Mr. Harris: Do I understand, now, that we are also examining the relationship of Judge Buffington to Root against Universal? Is that within the purview of this investigation?

The Master: No, it is not within the purview of the investigation but I think all these circumstances may have some bearing.

By Mr. von Holst:

Q. Did you also check Judge Buffington in? A. Yes, sir, 1538
they both arrived together.

Q. Can you describe David Kaufman? A. Well, he is medium——

Q. Withdraw that question; first, did you after the time that you checked both these men in, did you see them on other occasions thereafter? A. Yes, sir.

Q. Can you describe David Kaufman? A. Well, he is medium stature, quite square jawed, I would say past middle age—just depends on what middle age is.

Mr. Harris: I see, from your point of view he is past middle age.

1539

By Mr. von Holst:

Q. Would you say he was past fifty? A. Oh, yes, I would say so.

Q. Tall or short? A. Quite short.

Q. Slender or broad? A. Well, I would describe him as stocky. He wasn't overly fat, quite broad shoulders.

Mr. Harris: Well, of course, this description could fit thousands of men. I don't see that it helps us very much.

By Mr. von Holst:

Q. Can you describe Joseph H. Buffington? A. He was quite tall. Due to his age he was bent a little, I would say. He had a white mustache, white hair.

By Mr. Harris:

Q. Was he past middle age? A. Definitely.

By Mr. von Holst:

1541 Q. Now, when did you meet Morgan Kaufman? A. That was later on, during the season.

Q. What season? A. The season of 1933 and '34.

Q. And did you see him when he came to the hotel? A. I don't recall his arrival.

Q. Did he stay at the hotel? A. Yes, sir.

Q. And can you describe Morgan Kaufman? A. That would be about the same description as the other one, only he had dark hair, grayed a little, perhaps not quite as heavy, about the same height, perhaps a little taller.

Q. Straight or curly hair? A. It was black and quite curly.

Q. Clean shaven or mustache? A. Clean shaven.

1542 Q. Now, approximately how long did these men, these three men, stay at the Miami-Battle Creek during that season? A. Do you want me to refer to the records, or just——

Q. Well, you might state approximately, I think.

Mr. Harris: If he recalls independently.

Mr. von Holst: Yes.

The Witness: I beg your pardon?

By Mr. von Holst:

Q. Do you recall——

By Mr. Harris:

Q. Do you have an independent recollection? A. Well, they were there several weeks. Judge Buffington and David Kaufman were there longer than Morgan Kaufman. That was usually the case.

Q. I suppose you can remember anyone else who stayed there quite definitely? A. Yes, sir.

By Mr. von Holst:

Q. And during the stay how often did you see them, about? A. Well, just, I would say, every day, if they were 1544
in the building, our place is so small down there you couldn't go and come without seeing them.

Q. How large was Miami Springs—or, Miami-Battle Creek, I should say? A. We have about sixty rooms available to the public.

Q. And was that the size of the place during the years 1933 to 1936, inclusive? A. No, we added twenty rooms. I believe we used those the first time during '36.

Q. What time in '36? A. Well, they were supposed to be ready in November, '35. I think it was along in January or the first of February before we——

Q. That is, January or February, 1936? A. That is 1545
right.

Q. Before they were ready for the public. A. That is right.

Q. Now, these three men whom you have mentioned, can you state whether or not they were together during that season? A. Almost continually. They had the same table in the dining room, had the same place in the solarium.

Q. Did they or did they not go around together? A. I would say almost continually.

Q. And during their stay at the hotel, according to your observation, how did they spend their time? A. Well, they——

1546 Q. During this season. A. They usually took their baths, and then went out into the solarium, in the afternoon, and took in the races. In the evening they were usually gone.

Q. Now, during your employment at Miami-Battle Creek you say you met J. Warren Davis? A. Yes, sir.

Q. And when did he come there? A. It was in 1934 and 1935, I believe was the first year.

Q. And was he alone or accompanied? A. Accompanied by his wife.

Q. And during this season, 1934 and '35, state whether or not the two Kaufmans and Judge Buffington were also at
1547 the Miami-Battle Creek. A. Will you repeat that question, please?

(The question was repeated by the reporter as follows:

"Q. And during this season, 1934 and '35, state whether or not the two Kaufmans and Judge Buffington were also at the Miami-Battle Creek.").

A. Yes, sir.

By Mr. Harris:

Q. By season of 1934 and 1935 you mean the season
1548 beginning in the fall of 1934 and ending in the winter of '35? A. Well, our season ran from—our year, of course, at that time we were only open in the wintertime.

Q. Yes. A. It was from November 1st until the end of May.

Q. So you mean from November, 1934 until the end of May, 1935? A. That is right.

By Mr. von Holst:

Q. And during this season of 1934 and '35 state whether or not you saw the Kaufmans together with Judge Buffington and Judge Davis. A. Oh, yes.

Q. How frequently? A. Practically every time they went out together, they were in the solariums together, it was just, the same was true with them as it was with the Kaufmans and Judge Buffington.

Q. What about eating their meals? A. Dined at the same table in the dining room.

Q. Did you ever see them in the lobby together? A. Yes, sir.

Q. Did you ever see them doing anything in the lobby that you remember as having made an impression? A. Well, when they would come in in the evening or late at night they had some little ditty they used to sing, they used to put their 1550
arms on each other's shoulders and have a little dance in the middle of the lobby.

By Mr. Harris:

Q. All four of them? A. Or more, there used to be more in the crowd.

Q. Oh.

By Mr. von Holst:

Q. And those four were included in the dances, were they? A. Yes, sir, they were the main ones. 1551

Mr. Harris: Well, now, I move to strike out, "they were the main——

The Master: Well, I think that was his observation.

Mr. Harris: I don't know what it means, Your Honor, "they were the main ones".

Mr. von Holst: Let's find out.

By Mr. von Holst:

Q. Why do you say they were the main ones? A. Well, anyone else——

Mr. Harris: In other words, I object to asking why. That just calls for a state of mind.

A. (Continued) Anyone else that would be in there were people that came with them.

Mr. Harris: I move to strike out the answer. The question is objectionable and so is the answer. This witness cannot state why he did these things. It is proper cross-examination but not proper direct.

The Master: The answer really described what he saw. I think that is all there was to it.

1553

By Mr. von Holst:

Q. Now, did this party—by that I mean the two Kaufmans and Buffington and Davis—return to the sanitarium in the following season of '35-'36? A. Yes, sir.

Q. Did they arrive together, or separately, or how, to your best recollection? A. Well, Judge Kaufman—David Kaufman and Judge Buffington I would say always came together. The others used to follow a little later. Now, whether that was the particular case in that year, I would have to look at the ledger sheets.

Mr. Harris: Well, I certainly object to that sort of
1554 thing, what they usually did, instead of what actually happened. I move to strike out the answer.

Mr. von Holst: I submit that is competent. He has said that the two usually came together. Now, the ledger sheets are i to show their exact times of arrival and departure.

Mr. Harris: Well, then, the ledger sheets are the best evidence of whether they usually came together or not.

The Master: Well, you can consult the ledger sheets if you wish. They are in evidence.

(The witness examined Amici Exhibit 56.)

Mr. von Holst: For the year 1936.

Mr. Harris: I object to the witness testifying to that. The ledger sheets are the best evidence themselves.

Mr. von Holst: He is entitled to refresh his recollection from the ledger sheets.

Mr. Harris: No, they are in evidence.

Mr. von Holst: Well, certainly a man can refresh his recollection from a document in evidence.

Mr. Harris: If he can, he can refresh it from anything that refreshes his recollection,——

1556

The Master: Yes.

Mr. Harris: It doesn't have to be in evidence, but if it is in evidence it is the best evidence, and not his recollection.

The Witness: Mr. David Kaufman and Mr.—Judge Joseph Buffington checked in on January 21st.

By Mr. Harris:

Q. What year? A. 1936.

By Mr. von Holst:

Q. And the other two when?

1557

By Mr. Harris:

Q. May I ask, is that your recollection, now, as refreshed by the documents you have seen, or are you just relying on the documents? A. I wasn't going to state that they, definitely, came the same day, without looking at the records.

Q. So you have no independent recollection of it? A. Yes, sir, I do.

Q. You remember that they came—— A. I said whether that was the particular case in that year I wouldn't state definitely.

1558 *W. C. Herrell—For Amici Curiae—Direct*

Q. You remember now definitely that they came on the 21st of January? A. The records prove that.

Q. I am not asking what the record shows. You remember it now, having looked at it.

Mr. Harris: You see, this is the trouble with letting a man do this. The records are already in evidence. He can't remember that any more than I can.

Mr. von Holst: That is the old problem, if the Master please, as to what refreshed recollection is. Now, he stated a fact accurately with his unaided
1559 recollection, that they came in then.

Mr. Harris: No, he said they usually came.

Mr. von Holst: All right, and he was right for the year he was testifying about.

Mr. Harris: Well, this isn't usually.

Mr. von Holst: Now, he looks at the records and sees from there. That is his recollection. As to the specific date, he might have no independent recollection, but looking at the date he says now that that was the time they arrived. Now, of course, he can't say——

Mr. Harris: It is silly!

Mr. von Holst: ——that they actually arrived on
1560 that particular day.

Mr. Harris. Why, of course he can't.

Mr. von Holst: I don't think that is the point at all.

Mr. Harris: If he can't remember the date they came, how can he remember that they came together?

Mr. von Holst: Very easily.

The Master: He might remember that they came together without knowing the exact date.

Mr. Harris: It would be a good recollection!

1561

By Mr. von Holst:

Q, And when did Morgan Kaufman and Judge Davis arrive in 1936?

Mr. Harris: Well, first, let's see what his recollection is, before he examines the documents.

By Mr. von Holst:

Q. Do you remember how soon after Buffington and David Kaufman arrived in 1936, how soon after that Morgan and Davis arrived? A. Probably two weeks.

1562

The Master: Now, you may refresh your recollection by looking at the records, if you wish.

(The witness examined Amici Exhibit 56.)

The Witness: Mr. and Mrs. J. Warren Davis were down a few days in December of '35. They were there three days and checked out.

By Mr. Harris:

Q. What days? A. And returned——

Q. What days? A. They came late in the evening of December 22nd and they checked out, according to this, either just before lunch or after lunch on the 26th of December. Then they returned in—late in the evening of January 30, 1936.

1563

By Mr. von Holst:

Q. And stayed how long then? A. Well, now, that is the year where there is one week's ledger sheets missing. This bill takes through February 15th.

Mr. Harris: I certainly object. I want it to appear on the record that the witness is reading from

1564 *W. C. Herrell—For Amici Curiae—Direct*

some papers that have been marked in evidence over my objection, and not testifying from memory.

The Master: That will be noted on the record.

By Mr. von Holst:

Q. Now, during the stay of this party, that is, the two Kaufmans and Davis and Buffington, in '36, when they were all together, how did they spend their time?

The Master: He hasn't told us when Judge Davis came.

1565 Mr. von Holst: I am sorry.

The Master: He said Mr. Morgan came on the 31st, I think.

The Witness: No, that was Judge Davis.

The Master: Judge Davis? I thought he said Morgan Kaufman and his wife; my mistake.

The Witness: February 2nd, after lunch February 2nd, in the afternoon.

By Mr. von Holst:

Q. How long did he stay?

1566 Mr. Harris: May it appear that that is read from the documents in evidence.

The Witness: That is '36.

By the Master:

Q. Who came then? A. Mr. Morgan Kaufman.

Q. Judge Davis came on the 31st? A. 30th, I believe, late in the afternoon of the 30th.

By Mr. von Holst:

Q. How long did Morgan stay? A. He stayed until about the 22nd. There is one week missing here, on the 15th. This

goes through the 15th. Those are the two weeks that have not been returned with these ledger sheets.

Q. Well, in 1936 were all four of them there together? **A. Yes, sir.**

Q. Part of the time? A. Yes, sir.

Q. And during the time that they were all four there together how did they spend their time? A. Same as I stated before.

Q. Will you refer to the season of 1934 and 1935 and state from those records when these four people arrived, and when they checked out, taking them one by one. A. In '34 and '35? 1568

Q. Yes, that is the season of 1934-'35. A. Mr. David Kaufman checked in on the 14th.

By Mr. Harris:

Q. Of what? A. Excuse me, January 14, 1934.

By Mr. von Holst:

Q. Who came in then? A. Mr. David Kaufman.

By Mr. Harris:

Q. 1934 or '35 ? A. It is January of 1934.

Mr. von Holst: The season of 1934-'35 I wanted. 1569

The Witness: Excuse me; 29th of January.

By Mr. von Holst:

Q. What year? A. 1935.

Q. Who checked in then? A. Mr. David Kaufman.

Q. How long did he stay? A. Checked out on February 27th.

Q. 1935?. A. That is right.

Mr. Harris: Now, really, I don't know why we waste all this time. He is just reading from these

1570 documents that are in evidence. We can get the same information just by looking at them. We can read them as well as he can.

The Master: That is true, but I take it that the examiner wishes to ask him questions about what happened during these periods. It helps to clear the matter to tell when they came and when they left.

Mr. Harris: Well, the examiner could just point out when they came and left. It gives the impression that this witness is testifying to something. He is just reading out of a document, you see.

1571 The Master: Well, that is understood, he is reading from the records.

By Mr. von Holst:

Q. Now, as to Morgan Kaufman for the season 1934-35. A. February 9, 1935.

Q. Until when? A. March 2nd, 1935.

Q. And the same as to Judge J. Warren Davis. A. Judge Davis checked in the 31st of January, 1935.

By Mr. Harris:

1572 Q. December 22nd, wasn't it? A. Well, I stated that a minute ago, he checked out and then returned on the 31st of January.

By Mr. von Holst:

Q. And stayed how long?

Mr. Harris: 30th of January, according to this.

The Master: Yes, he said the 30th.

Mr. Harris: I thought he said the 31st.

The Master: You mean the 30th of January?

By Mr. von Holst:

Q. Is that the 30th or 31st of January, Mr. Herrell? A. No, this is the season of '34 and '35.

Q. Yes.

Mr. Harris: Oh, I thought it was '35-'36.

By Mr. O'Mara:

Q. January 31st? A. January 31st.

By Mr. von Holst: 1574

Q. And checked out? A. March 2nd, 1935.

Q. And Joseph H. Buffington? A. 29th of January.

Q. He checked in? A. Checked out March 2nd.

Q. Both 1935? A. That is right.

Q. Now, did these four people return to Miami-Battle Creek in the season of '36 and '37? A. Yes, sir.

Q. And were they there during that season together part of the time? A. Yes, sir.

Q. And what have you to say as to the way they spent their time in that season, the four of them? A. Repetition of what I said before.

Q. Now, during the times that Judge Buffington and 1575
David Kaufman were at Miami-Battle Creek do you know who attended to any matters that might come up with respect to Judge Buffington's bills or accommodations, or other matters of that kind? A. Mr. David Kaufman.

By the Master:

Q. You mean he paid Judge Buffington's bills? A. No, sir, no, sir, but any adjustments, anything that the Judge wanted in regard to service or anything of that kind.

Q. Oh. A. Or any adjustments; he didn't pay his bills.

By Mr. Harris:

Q. Judge Buffington was blind, practically, wasn't he? A. No.

Q. Good eyesight? A. Yes, he did very well.

Q. Excellent eyesight? Did he have excellent eyesight at that time? A. Well, I couldn't state as to that. I never noticed any difficulty in seeing at that time, I mean, he always signed his own checks and he always——

Q. David Kaufman acted as a sort of secretary for him? A. Yes, sir. I don't know as he did any stenographic work,
1577 but he looked after his interests.

Q. Yes. Judge Buffington was quite advanced in years? A. Oh, yes, yes, sir.

By Mr. von Holst:

Q. Now, did you observe during the periods that you testified to, when these men were at Miami-Battle Creek, how they addressed each other? A. Why, Judge Buffington always addressed Mr. David Kaufman, Mr. Morgan Kaufman, by their first name, David and Morgan. Beyond that I wouldn't say. I do know that.

1578 Q. Now, will you produce the documents called for by paragraph 2 of the subpoena, that is, telegrams and so forth.

The Master: Do you think you need copy those in the record?

Mr. von Holst: I shouldn't think so.

The Master: Have you copies of them?

Mr. von Holst: We have furnished counsel with photostatic copies of them. We have the negatives and you have the originals.

The Master: Very well, then, don't copy them into the record, just add them as physical exhibits.

By Mr. von Holst:

Q. Now, during the seasons that you have testified to, do you know what the practice was at Miami-Battle Creek when a guest wanted to send a telegram? A. We had a teletype machine there in the office, they wrote out their copy and we sent it out on the machine, and in most cases we kept their original copy. Occasionally someone insisted on keeping their own copy, and in that event we pasted up our copy on the teletype machine to keep as record reference. In other words, we endeavored to keep a copy of every telegram sent out. 1580

By the Master:

Q. The teletype machine communicated with the telegraph office? A. It was directly with the Western Union, that is right.

Q. Yes. A. We could both send and receive.

By Mr. von Holst:

Q. Now, will you segregate from this bunch of documents produced in accordance with paragraph 2 of the subpoena those which were sent or signed by J. Warren Davis; first, the one to Mrs. William S. Vare, dated Tuesday, February 19th, 1935. 1581

(The witness produced the document called for.)

Mr. von Holst: I would like to say to the Master that we propose merely to mark these for identification at this time. I ask that this——

Mr. Harris: Well, why not just mark them all for identification in a bunch?

Mr. von Holst: I am going to.

Mr. Harris: Wouldn't it save time? If you are not going to ask any questions about them there is no point in going through them, is there? I assume you are going to ask Judge Davis and Judge Buffington about them.

Mr. von Holst: That could be done.

Mr. Thiess: You don't want to put them all in.

Mr. von Holst: I am not putting any of them in, I am marking them just for identification at this time. They might just as well be marked seriatim.

Mr. Thiess: All of them?

1583

Mr. von Holst: No, just those we selected.

Mr. Thiess: He wants to mark all of them.

Mr. von Holst: I will hand you the whole bunch, if you want to look at them.

Mr. Harris: Yes.

Mr. von Holst: I am not proposing even to mark all of them for identification.

Mr. Harris: Why can't they all be marked for identification, which merely means that they are produced pursuant to the subpoena, and then either one of us have the right to do what further we may want with respect to them. You don't sponsor them in marking them for identification, they are only delivered in response to that subpoena duces tecum, as I understand it.

1584

Mr. von Holst: That is correct.

The Master: Unless you wish to proceed further with the proof of them, in case you do wish to offer any of them in evidence.

By Mr. von Holst:

Q. I will ask you this, Mr. Herrell, all these documents that you have produced in accordance with paragraph 2 of the subpoena are documents which, as you have just testified

to, the hotel kept as their records of telegrams sent out by guests, is that correct? A. That is correct.

The Master: And you will offer the bunch for identification?

Mr. von Holst: Yes.

By Mr. von Holst:

Q. Where have these records been kept since they were made up? A. In our files. In the busy months we filed them each month; the slack months we filed them together by two months. 1586

Q. And by "our files" you mean the files of—— A. Miami-Battle Creek, we kept them.

Q. And who selected these and brought them to this hearing? A. They were returned to us by the F. B. I.

Q. All of them? A. Yes, sir.

Q. And then you say "returned to us", meaning to Miami-Battle Creek? A. That is right.

Q. And then you brought them to this hearing? A. That is right.

Q. In accordance with the subpoena? A. That is right.

Mr. von Holst: Well, then, it is agreed that we will mark these seriatim for identification,—— 1587

Mr. Harris: True.

Mr. von Holst: —in the order which they now appear.

The Master: You wish to mark them separately, do you?

Mr. Harris: You can mark them as a bunch, if you want to. Either one of us can take out such as we want to offer and may offer them further in evidence.

Mr. von Holst: I don't know how many there are. We can count up right now, though. I might state,

1588 *Colloquy*

Mr. Harris, that we have not at this time photostats of all of them, because we had not intended to use more than a few.

Mr. Harris: Well, if you will let us examine the originals that will be all right, or furnish us copies.

Mr. von Holst: Of course, when we offer any in evidence on subsequent identification——

Mr. Harris: That is right, we might want to offer some ourselves, and we would like to be able to do so.

Mr. von Holst: My only point, Mr. Harris, is that I do not want to go to the trouble of making up photo-
1589 stats of all of this stuff.

Mr. Harris: I don't request that, but I request the opportunity to look at them.

Mr. Thiess: That is O. K.

The Master: All right.

Mr. von Holst: Well, then, we will just mark them.

Mr. Neuman: There are fifty-one.

Mr. von Holst: And we ask that this bunch of documents be marked Amici Exhibit 57 for identification, comprising fifty-one documents.

(The following were marked Amici Exhibit 57 for identification:

1590

Copy of telegram dated February 19, 1935, from J. Warren Davis to Mrs. William S. Vare.

Copy of telegram dated February 16, 1937, from J. Warren Davis to Mr. Charles L. Stokley.

Copy of night letter telegram from J. W. Davis to Mr. Joseph R. Hewitt.

Copy of telegram dated January 23 from David to Morgan S. Kaufman.

Copy of telegram dated February 7, 1935, from David E. Kaufman to Morgan S. Kaufman.

Copy of telegram from David to Hon. J. Warren Davis.

Copy of telegram dated February 15 from Morgan S. Kaufman to L. J. Murphy, Cashier.

Copy of telegram dated Feb. 18, 1935, from Morgan to Albert M. Greenfield.

Copy of telegram dated Feb. 27, 1935, from Morgan to Edwin L. Weisl.

Copy of telegram dated Feby. 14, 1936, from Morgan S. Kaufman to Robert T. McCracken, Esq.

Copy of telegram Morgan to Robert Bast.

Copy of telegram dated Feb. 13, 1936, from Mrs. J. Warren Davis to Martin C. Ribsam.

Copy of telegram dated Feb. 2 from Eddie to 1592
Alice Weisl.

Copy of telegram dated February 5 from Ed. to Alice Weisl.

Copy of telegram dated February 7, from Ed to Morris E. Fewell.

Copy of telegram dated Feb. 9 from Eddie to Alice Weisl.

Copy of telegram dated February 18 from Ed to Albert Kleenenberg.

Copy of telegram dated Feb. 3 from Ed to George Odlum.

Copy of telegram dated 2/5 from Ed to Floyd 1593
B. Odlum.

Copy of telegram dated 2/10 from Ed to Leo Spitz.

Copy of telegram dated Feb. 11 from Ed to Sam Cole.

Copy of telegram dated Feb. 11 from Ed to Stanton Griffis.

Copy of telegram dated Feb. 14, 1937, from Governor to Senator Edwin L. Weisl.

Copy of telegram dated February 25 from David E. Kaufman to Hugh F. Derworth.

Copy of telegram dated February 1, 1935 from David E. Kaufman to Louis B. Mayer.

Copy of telegram dated February 5, 1935, from David E. Kaufman to Mr. Armin Friedman.

Copy of telegram dated 2/28 from Morgan to Albert M. Greenfield.

Copy of telegram dated Feb. 26 from Morgan to Mrs. Vera Brand.

Copy of telegram from Joseph Buffington to Mellon.

Copy of telegram from Mother and Father to
1595 Miss Mary S. Davis.

Copy of night letter telegram from J. Warren Davis to Miss Mary S. Davis.

Copy of telegram from David to Mrs. Walter Stone.

Copy of day letter telegram from Mr. and Mrs. J. Warren Davis to Mrs. A. Crozer Reeves.

Copy of telegram dated 2/26 from Dad to Joseph Buffington, Jr.

Copy of telegram dated January 13 from David to Mabel Walker Willebrandt.

Copy of night letter telegram dated Feb. 16,
1596 1936 from J. Warren Davis to Mrs. Charles F. Guhlman.

Copy of telegram dated February 7 from Kaufman to Joe Miller.

Copy of telegram dated Feb. 18, from M. S. Kaufman to Mr. Roy Voris.

Copy of telegram dated February 4 from David E. Kaufman to Hon. Joseph L. Kun.

Copy of telegram dated January 27 from David to Edwin L. Weisl.

Copy of telegram dated February 2 from Morgan to Norman S. Swan.

Copy of telegram dated 2/19 from Joseph Buffington to W. P. Rowland.

Copy of telegram dated February 12, 1937 from David Kaufman to Girard Smelting and Refining Co.

Copy of telegram dated 2/11 from Morgan to Joseph Bernhardt.

Copy of telegram dated February 1, 1935, from David to I. Friedkin.

Copy of telegram dated 2/20 from Ed to Mabel Walker Willebrandt.)

1598

Mr. von Holst: Your Honor will indulge me a moment? I want to look through these notes.

By Mr. von Holst:

Q. Mr. Herrell, did you search for all the documents that were requested by paragraphs 1 and 2 of the subpoena duces tecum? A. I didn't search personally for the doctor's books, we wired for them, but at that particular time the Government was taking over, and they were not to be found.

Q. That is, the doctor's books from which the medical charges—— A. Medical charges.

Q. —were made? A. Were posted to the ledgers. I did search for the registration cards. 1599

Q. Yes, you already testified to that. A. Registration sheets.

Q. You stated that the Government has taken over; what does that mean? A. Well, they have taken possession of our building down there for the duration.

Q. Miami-Battle Creek? A. Of course, everything had to be vacated and moved out, in about one week's notice.

Q. And you have produced here all the documents that you could find responsive to the subpoena, have you? A. That is right.

Mr. von Holst: That is all the direct.

The Master: Cross examine.

1600 *W. C. Herrell—For Amici Curiae—Cross*

CROSS EXAMINATION

By Mr. Harris:

Q. Now, Mr. Herrell, you are still a young man, aren't you? A. Yes, sir.

Q. What is your age? A. A. Twenty-seven.

Q. And in 1932, when you began to work for the Miami-Battle Creek, you were about seventeen or eighteen,—— A. Eighteen.

Q. —I presume? A. Eighteen, that is right.

Q. By the way, you speak of Miami-Battle Creek; actu-
1601 ally, the name of the company was Battle Creek, Incorporated. A. To begin with. You will notice on the later sheets it was changed to Miami-Battle Creek.

Q. Well, I didn't find anywhere that it was changed on these sheets. At any rate, wherever—oh, yes, The Miami-Battle Creek. A. That is right.

Q. I see some of those, but those two were the same? A. That is right.

Q. One and the same? A. That is right.

Q. And you have a very good recollection, you say, of Judge Buffington and Judge Davis and his wife, and Mr. David Kaufman and Mr. Morgan Kaufman being together continuously during their stays at your hotel? A. That is
1602 right, whenever they came and went they were as a general thing together.

Q. Well, I say, you have a vivid recollection—— A. Yes, sir.

Q. —of that? And I understood you to say that you could with equal vividness recall plenty of other people who came and went, who they were, their associations and that sort of thing, is that right? A. I would say so, yes, sir.

Q. Well, now, neither of the Kaufmans had any interest in the Miami-Battle Creek so far as you know, did they, any financial interest? A. They did not, no, sir.

Q. That was Dr. Kellogg's enterprise? A. That is right.

Q. Were there other judges who came down there from time to time during this period?

Mr. Harris: Let the record note that the witness is taking some time to refresh his recollection.

A. I don't recall offhand.

By Mr. Harris:

Q. You don't recall whether there were any other judges or not—— A. No, sir. 1604

Q. —during the entire period about which you have been interrogated, is that right? A. I don't recall any.

Q. Do you remember any other lawyers being there during that period? A. We have had several lawyers. Of course, a man could check in and check out, without knowing he was a lawyer.

Q. I mean, people whom you knew to be lawyers. A. No, sir, I don't recall any at this time.

Q. You don't recall any. You, of course, knew Mr. David Kaufman and Mr. Morgan Kaufman were lawyers, did you not? A. I didn't know Mr. David Kaufman was. I did know Mr. Morgan Kaufman was.

Q. And you knew that Mr. David Kaufman had been— 1605
was it ambassador? A. Ambassador to Siam.

Q. Siam, was it? A. Siam, yes, sir.

Q. And he was a prominent citizen, you understood, did you not? A. According to what I heard, I did, yes, sir.

Q. I say, you understood that? A. Yes, sir.

Q. And you don't recall, then, that there were other groups of persons who came and went together and associated together during this period? A. Well, I believe Mr. Friedkin was a lawyer.

Q. Mr. who? A. Mr. Friedkin.

Q. Of New York or Philadelphia, or do you recall where he came from? A. I believe he was from New York, I wouldn't——

Q. He was—— A. He usually came each year.

Q. —the only other lawyer you can remember down there at that time? A. There was a Mr. Weisl; whether he was an attorney or not I——

Q. Now, did Mr. Weisl know Judge Buffington or Judge Davis? A. Apparently, yes, sir.

Q. And didn't Judge Buffington call him Edwin, or Ed? A. I couldn't say.

1607 Q. You observed Judge Buffington called Mr. Kaufman, one of them David, and the other one Morgan? A. That is right.

Q. But you don't—— A. They were there a longer period of time, more often.

Q. Just let the answer be responsive——

Mr. von Holst: I suggest it is a responsive answer.

Mr. Harris: I suggest it is not.

Mr. von Holst: A witness does not have to cut his answer short.

Mr. Harris: I insist that the witness must answer my question; if I want a "yes" or "no" answer I am

1608 entitled to it.

The Master: That is right.

Mr. Harris: If the witness cannot answer "yes" or "no" he must say that he cannot, and let the Judge decide whether or not he can make an explanation.

The Master: That is quite true, but after he has answered it, he can make an explanation.

Mr. Harris: That is right, but that is a matter, I submit, for redirect examination—not that I object to it, but it is just a little more orderly, if the witness permits me to lead him, and I assume Mr. von Holst would not be so neglectful as not to clear any such matters as that up.

By Mr. Harris:

Q. So you do not recall that Judge Buffington called Mr. Weisl by his first name? A. No, sir, I couldn't tell about that.

Q. You don't recall that he called Mr. Friedkin—did he know Mr. Friedkin? A. I believe he did, I am sure he knew him, but how well he knew him I—I wouldn't state.

Q. Did he not call him by his first name? A. I couldn't state as to that, either.

Q. Now, didn't Mr. Weisl go out with Judge Buffington and Judge Davis and the two Kaufman brothers? A. That is right. 1610

Q. And they were friendly? A. Yes, sir.

Q. They danced a jig together when they came in at night? A. Yes, sir.

Q. Did these jigs, merry, little, good-night jigs that you have spoken of, occur each year during the time that they were there which you have described? A. I wouldn't state that definitely, no, sir.

Q. What year, in what year did the jigs commence and when did they cease? A. It may have been any year they were there.

Q. Oh, you don't know what year it was? A. No definite year, it was more than one year, I will state that. 1611

Q. So more than one year they danced jigs, but you cannot recall when it started and when it ended? A. That is right.

Q. It may have been after 1935 and may have been before? A. May have been both.

Q. And it may have been both, may have been either or both? A. That is right.

Q. And you have no definite recollection? A. No, sir.

Q. Were you during the time, these times, were you on night duty as well as day duty? A. I relieved for night duty.

Q. So you were only on duty at night—— A. That is right, I relieved the night clerk, sometimes——

Q. Beginning what year, with what year? A. Well, most of the time I was down there, I relieved the night clerk, the man, until ten o'clock, one night a week. I relieved the night until one o'clock, one night.

Q. So it was only two nights a week that you would see these men come in quite late and dance a jig? A. As a general thing, yes, sir.

Q. And Mr. Weisl and Mr. Friedkin joined in the festivities when they were there? A. That is right.

1613

Q. Do you recall any other guests who joined in the festivities at the time? A. There was a Mr. Bast. He came only one year, I believe, possibly two.

Q. And he went out with them and danced when he came in, too? A. Well, now, I don't recall him, he was there a shorter time and not as often, but he was friendly with them, he knew them. I believe when he came, he came with them.

Q. And did Mr. Weisl sit at the same table with them? A. Yes, sir.

Q. And Mr. Friedkin? A. Well, he often had his wife with him. Of course, the large table there would accommodate probably eight people, easily, in our dining room. I

1614

believe Mr. Friedkin and his wife had a table to themselves as a general thing.

Q. But they sometimes sat with these other people, did they? A. That is right.

Q. And did they sometimes join them in the solarium? A. Mister.

Q. What? A. Mr. Friedkin.

Q. Mr. Friedkin. And did Mr. Bast do the same thing? A. Yes, sir.

Q. And were there any others with whom these people were friendly, that you recall? A. Those are the only ones I recall, offhand.

Q. Those are the only ones you recall by name? A. That is right.

Q. Do you recall any others, even though you cannot identify them—— A. No, sir.

Q. —by name? A. No, sir.

Q. So that this little group, year in and year out, when they were there, came and were very—appeared to be good friends? A. That is right.

Q. Now, Dr. Kellogg had a habit of entertaining men of some degree of prominence at least for one year and charging it to advertising, didn't he? A. Occasionally, yes, sir.

Q. I noticed, for instance, that one year, at least one year, Judge Buffington paid no bills and that his bills were charged to advertising. A. That is right. 1616

Q. And the same was true with Judge Davis. A. That is right.

Q. Now, do you know whether that was ever done with either of the Kaufmans, or not? A. They were allowed some discount.

Q. But it was a small discount, relatively? A. Yes.

Q. I see. A. I believe the first year or two it was probably twenty-five or thirty per cent, I have forgotten, but they did have a liberal discount.

Q. But those are the discounts as shown on these bills? A. That is right.

Q. Now, were there any other people that you recall who had their bills paid by Dr. Kellogg? A. Well, there is Irving 1617 Fisher.

Q. Who was Irving Fisher? A. I don't know whether he was from Harvard or Yale.

By the Master:

Q. Professor Irving Fisher, from Yale, the economist? A. That is right.

By Mr. Harris:

Q. And who else? A. Well, there is another, a Mr. Commons, he was another economist. Now, what university he was from——

Q. Yes. A. —I wouldn't state.

By the Master:

Q. Hammond or Commons? A. Commons, C-o-m-m-o-n-s, I believe.

By Mr. Harris:

Q. Wasn't he a cost accountant or economist in New York City? A. He may have been, I couldn't say.

Q. Do you recall anyone else during that period who had his winter vacation charged to advertising? A. Well,
1619 now, Fisher and——

Q. Commons? A. —Commons, I believe Dr. Kellogg had those charged to his own personal account.

Q. Well, that is the same thing, isn't it? A. Yes, practically the same thing.

Q. They didn't pay anything? A. As far as they were concerned it was the same thing.

Q. Wasn't that just a means of advertising the institution, which Dr. Kellogg regarded as legitimate in the case of prominent people, who might recommend other guests to the hotel? A. I am sure——

Q. That is your understanding? A. Yes, sir.

1620 Q. There was no impropriety about that? A. No.

Q. Was Judge Buffington married during any of the years he was down there, as far as you know? A. If he was, I didn't know it.

Q. He never brought a wife, then? A. Never brought anyone with him.

Q. And the Honorable David E. Kaufman never showed up with a wife, either, did he? A. Not that I know of.

Q. And how about Mr. Morgan S. Kaufman? A. No, sir.

Q. Mr. Morgan Kaufman; but Judge Davis did come with his wife? A. That is right.

Q. Now, did Mrs. Davis go out on these evening parties with the gentlemen? A. I believe so, yes.

Q. And did she dance a jig when she came back? A. That is right.

Q. Now, I would like a little more vivid description of Judge Buffington dancing a jig late at night. He was well in his eighties then, wasn't he? A. Yes, sir, and he could dance a jig, too.

Q. As well as he could see the bills and checks, to sign them? A. Yes, sir.

Q. I have no doubt of that! A. At the time he was down there, he did very well.

Q. Now, I understood you to say that occasionally other people came back late in the evening with this party; did I 1622
understand you correctly on direct examination to say that—— A. Referring, may I ask, to Mr. Friedkin and Mr.——

Q. No, I thought perhaps there were people that they had met out—— A. No, sir.

Q. —in some restaurant or some place at night, and came back to the hotel for a while with them. A. Not that—I don't recall any particular instance. There may have been, understand.

Q. And did they have callers occasionally at the hotel? A. Oh, yes, and they often had dinner parties there at the hotel.

Q. That was not unusual among the guests in the hotel, 1623
to do that, was it? A. Oh, no.

Q. So they conducted themselves very much like any other little group who knew each other and visited the hotel from time to time? A. That is right.

Mr. Harris: That is all.

By the Master:

Q. Where was Mr. Bast from, Mr. Herrell? A. I beg your pardon?

Q. Where was Mr. Bast from, Philadelphia? A. I believe so, but I couldn't state, sir.

The Master: I think I know him, yes.

The Witness: Bast.

Mr. Harris: Oh, I did have a few more questions, so long as redirect has not commenced.

Mr. von Holst: Go ahead.

By Mr. Harris:

Q. How did you first become acquainted with this case? Who first got in touch with you from Mr. Thiess' and Mr. von
1625 Holst's office? A. Mr. Poore and Mr. Neuman.

Q. When? A. Latter part of May.

Q. This year? A. This year.

Q. Prior to that time you had never heard of this case? A. Not this case, no, sir. We had produced the records for the F. B. I. for some case.

Q. For the criminal prosecution, and your work now is entirely at Battle Creek Sanitarium, in Battle Creek, isn't it? A. That is right.

Q. You are there the year around? A. I will be.

Q. And what did Mr. Neuman and Mr. Poore say to you when they saw you? How did they find out about this? A.
1626 Couldn't state that.

Q. Didn't they tell you? A. I beg your pardon?

Q. Did they just come up to you and say, "We want you to testify", or what did they say to you? A. No, sir, they inquired as to whether—as I recall, they inquired, came in and—they asked for me, but I wasn't in at the time, because they were waiting there when I came down. Mr. McCampbell, the cashier, told me the gentlemen were waiting for me.

Q. Did they tell you how they had heard, found out your name? A. I don't recall they did, no, sir.

Q. Well, what did they tell you? What did they do? A. They asked if we had the records available of these men. Of

course, at that time they had not been returned; neither had we requested their return.

Q. Well, they were really records that were in the possession of the Miami Hotel, weren't they? A. I beg your pardon?

Q. They were really records that belonged to Miami-Battle Creek, didn't they? A. These records that have been——

Q. Yes. A. Yes, sir, oh, yes.

Q. And did they ask you to find out if you could get them from them, or from the F. B. I.? A. They asked us if we could write, yes, sir. 1628

Q. Would it not have been in your opinion more appropriate to have gone to the Miami-Battle Creek, or was there no one there? A. They were at the Miami-Battle Creek.

Q. Oh, they were? A. They came out to the Miami-Battle Creek. I was there at that time.

Q. Mr. Poore and Mr. Neuman? A. Yes, sir.

Q. But I thought you said they came to see you in Detroit? A. No, I was in Miami-Battle Creek.

Q. I see. A. I left there a few days later.

Q. I didn't get that clear. A. That was just before we closed.

Q. Now, how many conferences have you had with these gentlemen? A. I saw them at that time, and that was probably—they waited while I looked for the records, to see if they had been returned, then Mr. Poore came down to Battle Creek a short time ago, and I was with him probably two hours altogether at that time. 1629

By Mr. von Holst:

Q. That was in Michigan? A. That was in Battle Creek, been in Battle Creek since the first of June; and then yesterday morning, probably for about an hour.

By Mr. Harris:

Q. With whom? A. Mr. von Holst and Mr. Poore.

Q. And you went over your story with them? A. They went over these records, yes, sir.

Q. Did they tell you what they would like to prove? A. No, sir.

Q. Just told you to tell the truth? A. That is right.

Q. Nothing but the truth, and that is what you have done; you are under oath? A. Yes, sir.

Q. And your testimony as to your recollection, whether it was vivid or vague, is the absolute truth,—— A. Yes, sir.

1631

Q. —so far as your recollection goes? A. Yes, sir.

Q. Have you been promised anything other than your expenses? A. No, sir.

Q. Any entertainment, or anything of that sort? A. No, sir.

Q. Just been paid your hotel bill? A. My understanding is that I am to be reimbursed for my time.

Q. Oh, for your time? At what? Are you losing time at the Battle Creek Sanitarium? A. Yes, sir.

Q. And you are not getting paid while you are not there? A. Well, that I couldn't say yet.

Q. Well, at what rate are you being paid? A. Fifty dollars a week.

1632

Q. What do you receive at the Battle Creek Sanitarium? A. Fifty dollars a week.

Q. So that if your salary goes on out there you will be paid twice? A. Probably so, yes, sir.

Q. I mean, is it the understanding that you will only be paid for your time if you lose your salary? A. There has been no definite understanding regarding my time at all.

Q. You will be paid? A. That is my own understanding, yes, sir.

Q. You will be paid for your time—— A. Yes, sir.

Q. —if you lost your salary, is that the idea? A. There has been no—there has really been no discussion about my

time at all. I was furnished with expense money for my trip.

Q. Who or which of your superiors out there was consulted with reference to letting you come on? A. Miss Estell, Miss Gertrude Estell.

Q. Who was she? A. She was secretary, acting secretary of the Miami-Battle Creek, and she is now in charge at the Battle Creek Sanitarium, in Michigan, immediately under Dr. Kellogg. She is the righthand man.

Q. You don't expect to be compensated, you merely expect to be paid what you may lose on account of being away? 1634
A. That is correct, yes, sir.

Mr. Harris: That is all.

The Master: Mr. von Holst?

Mr. von Holst: I have just one question.

Redirect Examination by Mr. von Holst:

Q. During the years that you have testified to at Miami-Battle Creek, what were your hours on duty at the desk? A. From seven in the morning until usually seven o'clock, first year I was down there I worked from seven to seven, of course, with my meal hours out. Later on my hours, my regular hours, were seven to five-thirty, with my lunch hours 1635
out, but I worked until the work was done, sometimes it was six-thirty, sometimes it was seven. If I relieved the night man it was ten.

Q. When you were working as a bell boy did you ever do any other work in addition? A. Yes, there was two bell boys and we took—we relieved the clerk part of the time. The clerk at that time was Smith, who made up the bills. Of course, our place was so small down there, one person did two or three things, so we worked in back of the office. We sent telegrams,——

Q. During those—— A. —did various things.

1636 *W. C. Herrell—For Amici Curiae—Redirect*

Q. During those years that you have testified to did you or did you not live on the premises of the Miami-Battle Creek? A. The first year.

Mr. von Holst: That is all.

The Master: That is all.

(Discussion off the record.)

Mr. Harris: Now, Your Honor, I want to say again to you and to my brethren on the other side of the table that at the hearings in Chicago, Exhibit 11

1637 —may I see that, please?—the Exhibit Amici number 11, the matter about which Lenske was very closely inferrogated, particularly about the legend on the requisition and on the distribution sheet, U. O. P. versus Crew-Levick, suit filed 2-28-36, or something of that kind, on Exhibit 11, on the last line, there was the legend U. O. P. Co. v. Crew-Levick Equity suit filed 2/20/36, and on the Amici Exhibit 13, which was the distribution sheet relating to that payment to Mr. Kaufman of $10,000.00 there was the legend, U. O. P. Co. v. Crew Levick Equity suit filed 2/20/36; now, it was very clear from the course of the interrogation that the suggestion was that possibly that

1638 had been added at some later time, and perhaps in contemplation of this litigation. Now, we interrogated the company's auditors, Messrs. Price Waterhouse and Company, and Mr. Simonds, who was one of the auditors who did the actual work that year, has come to Philadelphia from Chicago, and has brought with him his original working papers. He examined this requisition within a few months after it purports to have been made, and his working sheets will show that necessarily that legend must have been there, because of the digest he made at the time.

Now, I am not engaged in making an inquiry. I am engaged here, we are engaged here in assisting

the Master to the extent that we can from our records, and I think that the Master would be interested in hearing Mr. Simonds, and I think Mr. von Holst as a friend of the court should be interested in bringing that out, because the matter will be thoroughly and completely clarified if it is.

The Master: And those exhibits I think we should have—is Mr. Gahagan in New York still?

Mr. Harris: I haven't seen him in months, but I imagine he is, unless he is in the service.

(Discussion off the record.) 1640

Mr. Harris: Would you like to wait on that until tomorrow and see if we can have the originals of that?

The Master: I think that would be the best plan.

Mr. Thiess: I think that is the way to do it.

Mr. Harris: But I do want it to appear that we have produced some real evidence, in the form of Mr. Simonds.

The Master: Well, Mr. Gahagan has my letter, and if you, or someone on your behalf if you leave New York too soon, would call him and say we are anxious for it and are really waiting for it; perhaps you can get him to move. He is more interested perhaps in 1641 getting in the Army than anything else right now.

Mr. Harris: What time shall we meet in the morning?

The Master: I would be glad to meet as soon as you gentlemen are ready.

Mr. Thiess: Anything suits us.

Mr. Harris: Would ten-fifteen be all right with you?

The Master: Yes, that is all right.

(Adjourned until Thursday, September 10, 1942, at 10:15 o'clock A. M., Eastern War Time.)

1642 **Transcript of Hearing, September 10, 1942**

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Thursday, September 10, 1942, at 10:15 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master

J. BERNHARD THIESS, Esq.,
(77 West Washington Street,
Chicago, Illinois)

1643 THORLEY VON HOLST, Esq.,
(77 West Washington Street,
Chicago, Illinois)
Amici curiae.

ROBERT W. POORE, Esq.,
(77 West Washington Street,
Chicago, Illinois)

SIDNEY NEUMAN, Esq.,
(77 West Washington Street,
Chicago, Illinois)
Counsel accompanying *amici curiae.*

1644 W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq.,
(100 Broadway, New York, N. Y.)

EDWARD J. O'MARA, Esq.,
(15 Exchange Place, Jersey City, N. J.)

JOHN R. MCCULLOUGH, Esq.,
(100 Broadway, New York, N. Y.)
representing Universal Oil
Products Company.

Evidence on Behalf of Amici Curiae (Continued)

W. L. DUNCAN, recalled.

Direct Examination (Continued):

The Master: I have the insurance policy. Do you want to examine on that? Have you seen it?

Mr. Harris: No.

The Master: I also have returned the subpoena as served on Mr. Ungerleider, in New York, which was sent me through the mail.

I have a letter from Mr. Gahagan saying that he has sent me the documents requested through the mail by special delivery, which, however, have not arrived yet, special delivery always being late. However, 1646
there seems some doubt whether one, at least, of the documents was not sent to Mr. Gleeson. We are going to check up with Mr. Gleeson now.

Mr. Harris hasn't seen that, I think.

Mr. von Holst: We have no photostats of it, if the Master please, because we didn't have it to photostat.

(Discussion off the record.)

Mr. Harris: I think it would save time if you would ask the witness which parcels it covers, or you might make a statement on the record yourself. 1647

Mr. von Holst: I think the witness probably can do it quicker than I can.

Mr. Harris: All right.

By Mr. von Holst:

Q. Mr. Duncan, I show you a document entitled Title & Trust Company of Florida, Jacksonville, Florida, Policy of Title Insurance, and numbered 6827, signed by the Title & Trust Company of Florida, by its president, and countersigned Lake Abstract & Guaranty Company, by W. L. Dun-

can, president. Will you state whether that is your signature at the bottom? A. Yes, sir, it is.

Q. And is that policy one in which you were the agent for the Title & Trust Company of Florida? A. It is.

Mr. von Holst: I offer that policy in evidence as Amici Exhibit 58.

Mr. Harris: The usual objections as to relevancy and materiality.

The Master: Yes.

(Policy of title insurance of Title & Trust Company of Florida, Jacksonville, Florida, number 6827, issued to Morgan S. Kaufman on November 25, 1935, in the amount of $10,000.00, was marked Amici Exhibit 58.)

1649

By Mr. von Holst:

Q. Now, referring to this policy, will you indicate on the plat, Amici Exhibit 39, the parcels on the plat that are covered by the policy? A. Now, you want me to indicate them as indicated here on the deed?

Q. On the plat, yes. A. Well, all of Block 405, as indicated on the plat as red G, deed 3, parcel 2.

The land described as Blocks 404, 406 and 407, lying on
1650 **the south and west side of the right of way of Atlantic Coast Line Railroad, less right of way for Grandview Avenue, is designated as red F, deed 3, parcel 1, red J, deed 3, parcel 5, and red I, deed 3, parcel 4.**

Q. Now, pausing there a moment, Mr. Duncan, and referring to red F and red J, will you state whether the description in the policy covers the portion of those areas lying northeast of the railroad track? A. It does not cover.

By Mr. Harris:

Q. How much of a fraction of an acre is that lying northeast of the railroad track? A. Well, now, the whole square

there is two and a half acres, or approximately two and a half.

Q. Well, it looks like about, less than a quarter of an acre? A. Oh, yes, less than a quarter.

By Mr. von Holst:

Q. Will you continue? A. Blocks 415 and 416, less the south 33 feet thereof, and less a right of way of Atlantic Coast Line Railroad, are designated on the plat as red P, deed 3, parcel 11, and red Q, deed 3, parcel 12 and 13.

All of the Blocks 414 and 419 lying west of Grandview 1652
Avenue are covered by red U, deed 3, parcel 9, also red H, deed 3, parcel 3.

All of Block 422 lying west of Grandview Avenue, less the south fifty feet thereof, is covered by red O, deed 3, parcel 10.

By the Master:

Q. Is that the part not cross hatched? A. It is cross hatched in red.

Mr. von Holst: The Master means cross hatched in one color or in two colors?

The Master: Well, there is a cross hatch of part 1653
of 422.

The Witness: Well, it covers all of 422 which is partially cross hatched with blue.

By the Master:

Q. Yes, it covers all of that? A. Yes, sir.

Mr. Thiess: I wonder if that is straight on the record there, about the cross hatching. Better clarify it.

Mr. von Holst: Just a moment.

1654 *W. L. Duncan—For Amici Curiae—(Recalled)—Direct*

By Mr. von Holst:

Q. Mr. Duncan, pausing there a moment, if you will allow me, the guarantee policy, as I understand it, covers the entire block 422 indicated on the plat partly in double cross hatching of blue and red and partly single cross hatching in red, is that right? A. That is correct.

The Master: May I ask the witness there if the part double cross hatched was not one of those lots where there was conflict of title.

The Witness: It is, yes, sir.

1655

By Mr. Harris:

Q. But you guaranteed it just the same? A. We did.

By the Master:

Q. Was that an error? A. Well, I am prone to think it was an error on the attorney's part, although I presume the reason for that is this, or the cause of it, it was described one way by metes and bounds description in the chain of title, and then later on described as Block 422, and I presume the attorney who examined it just did not realize that.

Q. By attorney, you mean your own attorney, I presume? A. Yes, sir. This is the metes and bounds description:

1656

"Begin at the Southeast corner of N½ of N½ of NW¼ of SW¼ of Section 32 Township 19 South of Range 27 East of the Tallahassee Meridian, run thence north to the intersection of Clayton Street and Oak Avenue, according to the Plat of Grand View Terrace, filed 26 February 1926, recorded in plat book 8 page 47, public records of Lake county, Florida, for point of beginning;——

Mr. Harris: Do you want to take all this down?

Mr. von Holst: Yes, he is taking it. Did you get that, Mr. Rodebaugh?

Read it a little slow, because it is hard to get.

A. (Continued) "run thence north 100 feet more or less to the right of way of Atlantic Coast Line Railroad, thence in a northwesterly direction along said right of way 90 feet, thence west 60 feet, thence in a Southeasterly direction parallel to said right of way, 200 feet to point of beginning, less right of way for Oak avenue."

Now, that is designated on the plat as red M, deed 3, parcel 8.

The next parcel is described: 1658

"Beginning at a point 686 feet west and 1021 feet north of the southeast corner of SE¼ of SE¼ of SW¼ of Section 32, Township 19 South of Range 27 East, according to the Official Map of the Town of Mount Dora, filed 8 May 1918 and recorded in Plat Book 3 page 37, public records of Lake county, Florida, run thence south 105 feet along west side of Highland Avenue, thence west 305 feet, thence north 105 feet, and thence east 305 feet to beginning; LESS any part of said land that may be located in the N½ of NW¼ of SE¼ of SW¼ of said Section, township and range."

1659

That is designated on the plat as red K, deed 3, parcel 6.

The next parcel of land, by metes and bounds:

"Begin at a point 686 feet west and 814 feet north of the Southeast corner of SE¼ of SE¼ of SW¼ of Section 32, Township 19 South of Range 27 East, according to the Official Map of the Town of Mount Dora filed 8 May 1918 and recorded in Plat Book 3 page 37,——

Mr. von Holst: Little slower.

A. (Continued) "public records of Lake county, Florida, thence south 76 feet along west side of High-

land Avenue, thence west 305 feet, thence north 76 feet and thence east 305 feet, to point of beginning; LESS any part covered by the following described parcel of land, to-wit:

"Beginning 100 feet north of the southeast corner of S½ of NW¼ of SE¼ of SW¼, thence extending north on easterly line of said tract 100 feet, thence west 150 feet, thence south 100 feet, thence east 150 feet to place of beginning, all in Section 32 Township 19 South of Range 27 East of the Tallahassee Meridian."

1661

That is designated on the plat as red L, deed 3, parcel 7.

The Master: Mr. von Holst,——

Mr. von Holst: May I ask one more question there?

The Master: I was going to say, in as much as the deeds are in evidence I don't think he needs to read that detailed description.

The Witness: That is all of it.

Mr. von Holst: That is the last, anyway.

Mr. Harris: Mr. von Holst, that is all the parcels in the deed from the Town of Mount Dora to Kaufman except which ones, just as a matter of convenience? Can you tell me?

1662

Mr. von Holst: Read the question of Mr. Harris.

(The question was repeated by the reporter as follows:

"Mr. von Holst, that is all the parcels in the deed from the Town of Mount Dora to Kaufman except which ones . . .?")

Mr. von Holst: Before answering your question, let me put another question to the witness.

By Mr. von Holst:

Q. Mr. Duncan, in that last that you read there is an exception, isn't there? A. Yes, sir.

Q. Now, is that indicated on the plat, the exception? A. I will have to presume that it is; that is, I will have to see the deed to verify that statement.

By Mr. Poore:

Q. Which deed? A. The deed to Kaufman from the City of Mount Dora, I think, would carry it.

Mr. von Holst: We better see the original, if the reporter will give it to us.

(The witness examined Amici Exhibit 42.)

1664

The Witness: No, sir, it is not excepted on this deed, and if I may explain that in this way, that that is the tract of land known as the Perry tract, and inasmuch as it partially takes in this description as set up in the deed from the City of Mount Dora to Kaufman, we intentionally excepted that from the parcel.

Mr. Harris: I don't quite understand that.

The Witness: Well, the Perry—the description of land which a Mr. Perry owns is in partial conflict with the description in the deed from the City of Mount Dora to Kaufman. Therefore, we excepted it.

By Mr. Harris:

1665

Q. How much is that? A. Well, if I remember correctly it is a very small strip, but I don't remember the exact——

Q. Very small fraction of an acre? A. Well, just a few feet.

Mr. Harris: I see, all right.

By the Master:

Q. How is it excepted there, by your general statement that you except anything that a better survey might show? A. Well, we make that as a general statement anyway in most policies. I don't know that we did here.

By Mr. von Holst:

Q. Just read from the policy the language of the exception. A. You mean the excepted piece?

Q. Yes. A. Well, I will repeat that:

"LESS any part covered by the following described parcel of land, to-wit:

"Beginning 100 feet north of the southeast corner of S½ of NW¼ of SE¼ of SW¼, thence extending north on easterly line of said tract 100 feet, thence
1667 west 150 feet, thence south 100 feet, thence east 150 feet to place of beginning, all in Section 32 Township 19 South of Range 27. . . ."

Q. And that is the piece that you referred to as being previously conveyed to Perry? A. That is correct.

By Mr. Harris:

Q. You said that was just a few feet? A. Just a few feet, yes, sir.

Q. Inconsequential, isn't it? A. Well,——

Q. As far as value. A. —down there where it is, I presume it is.

1668

By the Master:

Q. Is it on the railroad, that particular tract? A. No, sir, it is not on the railroad.

Q. Is it on the street? A. It is on Highland Avenue, yes.

Q. Highland Avenue, is that a main highway of Mount Dora? A. Yes, sir, but it is out of the town, I mean practically out of the town, but it is a highway leading out, leading into the town.

Q. Be about the size of the city lots? A. You mean this exception?

Q. Yes. A. Well, it is 100 feet by 150 feet.

By Mr. Harris:

Q. Is that the size of the exception? A. No, no.

Q. What is the size of the exception? A. Well, I would have to plat that out and see.

Q. Well, approximately. A. Well, that takes a little figuring.

(The witness made a calculation.)

A. (Continued) Well, by actual figures, twenty-two feet north and south.

By Mr. Harris: 1670

Q. Yes. A. By one hundred and fifty feet east and west.

Q. East and west, and is it in a little piece or strip, the land immediately south of the lot marked on the plat as 305? A. That is right.

By Mr. von Holst:

Q. Now, you have in your previous answer stated all the parcels guaranteed in the policy, is that right, and have shown which of those are guaranteed by your reference to the plat? A. I have.

Q. And anything not so described by you is not covered by the policy? A. That is correct. 1671

Q. And of the parcels which you have testified to, those indicated on the plat which are not covered by the policy are that portion which you have just testified to in red L on the plat, and the two pieces in red F and red J lying northeast of the tracks, is that right? A. They are specifically excepted.

Q. Yes, in the policy. A. In the policy, yes, sir.

Q. And it is true, is it not, that parcels indicated on the plat, the areas indicated on the plat as R, S and T are not covered by the policy? A. They are not covered by the policy.

Mr. von Holst: That is all the direct.

1672 *W. L. Duncan—For Amici Curiae—(Recalled)—Cross*

Cross Examination by Mr. Harris:

Q. Mr. Duncan, with the exception of parcels indicated on the plat as R, S and T, and the specific exceptions mentioned by you in several of the other plots which are specifically excepted from the policy, all of the parcels conveyed by the Town of Mount Dora to Mr. Kaufman are covered by your policy, are they not? A. Yes, sir.

Q. And your policy guarantees title in the penal sum of ten thousand dollars, is that not right? A. That is correct.

Q. Now, you have been searching titles and identified
1673 with real estate transfers, and so forth, in that part of the country for about twenty-nine years, I understood you to say? A. Yes, sir.

Q. What, in 1935—was this conveyed in '35?—in 1935 what was the assessed valuation of the parcels mentioned in your policy? A. I can't answer that question. I don't remember.

Q. Can you give us an approximate idea within some thousands of dollars? A. Why, Mr. Harris, according to assessments at that time we used about anywhere from a fourth to a third value of what we considered the real value, and based on that statement I am quite sure that the prop-
1674 erties would have been considered worth ten thousand or more dollars.

Q. You would? A. But I can't say positively.

Q. Yes, the Town of Mount Dora special improvement liens which were foreclosed, resulting in the Town of Mount Dora acquiring this property, were considerably in excess of ten thousand dollars, weren't they? A. As I remember, it was.

Q. About thirty thousand? A. Well, I can't answer that part of it, I don't know. I don't remember.

Q. Approximately thirty thousand dollars, isn't that right?

Mr. von Holst: Twenty-eight.

By Mr. Harris:

Q. Twenty-eight thousand dollars? A. When I spoke of assessments just now, I was speaking of county assessments.

Q. I understand, but I understand these are special improvement assessments. A. Yes, sir.

Q. As a real estate man you would say, however, that when twenty-eight thousand of special improvements accrued to the benefit of property that was assessed for that, it tended to increase the value of the property by some figure 1676
approximating that, wouldn't you? A. I certainly assume so.

Mr. von Holst: Just a moment, I object to the question, Your Honor. I don't think there has been any foundation laid for any such statement, and I don't think it is true, in the first place.

The Master: I don't think it is very persuasive, but I will allow the question.

Mr. von Holst: Have you the question? Read the question.

Mr. Harris: I think he said he presumed so.

1677

By Mr. Harris:

Q. Isn't that right, Mr. Duncan? A. Yes, sir.

Q. And that would be your judgment as a real estate man, isn't that right, sir? A. Yes, sir, yes, sir.

Q. Now, my recollection is that Mr. Stokley made some oral representation that these properties were worth in the neighborhood of thirty thousand dollars at the time. Based on your experience with the transfers of real estate at that time, and over a long period of years, would you venture an opinion as to whether that was not too far out of the way? A. Well, Mr. Harris, part of this property is covered by

orange groves, I don't know just how much, part of it is covered by—or, there are buildings on part of it, and I presume it has very good value, but as to whether it is worth thirty thousand dollars, I am not in a position to say, because I am not familiar enough with the actual physical——

Q. Well, you wouldn't hesitate to say that that part which is covered by this policy, as I understood you to say earlier, was worth at least ten thousand dollars? A. Naturally.

Q. All right. Now, R and S were not in the deed from the Town of Mount Dora to Mr. Kaufman, were they? Those
1679 parcels were not in the Kaufman deed, in the deed from Mount Dora to Kaufman?

(The witness referred to Amici Exhibit 42.)

A. It isn't in this deed.

(The witness also referred to Amici Exhibit 45.)

The Witness: Are you asking me if they were in the deed from the Town of Mount Dora?

Mr. Harris: That is right.

The Witness: Well, in this deed handed me, they
1680 are not.

Mr. von Holst: That is Amici Exhibit, just to make the record straight, 42.

Mr. Harris: That is right.

By Mr. Harris:

Q. And red T, which is deed 5, parcel 3, was not in the deed from the Town of Mount Dora to Mr. Kaufman?

(The witness examined Amici Exhibit 42.)

A. It is not.

By Mr. Harris:

Q. So actually your policy of title insurance guarantees in the sum of ten thousand dollars title to all of the property conveyed by the Town of Mount Dora to Mr. Morgan S. Kaufman with the exception of those two little strips that you mentioned as being northeast of the Atlantic Coast Line Railway, and this small strip south of lot 305, which you said was approximately twenty-two by one hundred and fifty feet? A. That is correct.

Q. And your answers with respect to values, in that you had in mind the actual conveyance from the Town of 1682
Mount Dora to Mr. Kaufman, and not these other parcels? A. Yes, sir.

Mr. Harris: All right, that is all.

Redirect Examination by Mr. von Holst:

Q. Mr. Duncan, you stated that part of this property mentioned in the deed from Mount Dora to Kaufman was orange groves. You know that, do you? A. Well, I will say that for this reason, that a good deal of the property that Mr. Stokley owned in Mount Dora is covered in orange groves.

Q. And the addition of streets and improvements of 1683
that kind, does that add anything to the value of orange grove country? A. Not to the value of the trees or the fruit itself unless it were used for building purposes, I would presume, except as a method of hauling them in and out.

Mr. von Holst: That is all.

By the Master:

Q. What was the date of this policy, Mr. Duncan? A. 28th day of November, 1935.

Q. 28th of November, 1935.

1684 *W. L. Duncan—For Amici Curiae—(Recalled)—Recross*

By Mr. O'Mara:

Q. 28th, did you say? A. 25th I should have said.

Q. 25th? A. 25th of November, 1935.

By the Master:

Q. What description did you receive on the property you were to guarantee or search? A. The land described in the deed from the Town of Mount Dora to Mr. Kaufman.

Q. Well, where did you get the description of the other parcels which were not in that deed? A. That are in the
1685 policy?

Q. I understood you to say that there were two parcels that were not in the deed which were covered by your policy. A. The other way around.

Q. Oh, not covered? A. Yes.

By Mr. Harris:

Q. Only the parcels in the Mount Dora deed are covered by your policy? A. Yes, sir, with some exceptions.

Q. With the three exceptions noted? A. Yes, sir.

Q. The only other exception is one as to taxes and one as to survey requirements, isn't that right? A. Yes, sir.

Q. And those are customary and standard provisions in
1686 your policies, are they not? A. Yes, sir.

By the Master:

Q. You don't know anything about the buildings on these properties, do you? A. I am not familiar enough with them to express myself.

Q. Who was this man, John Wilkins Sawyer, that has been referred to in these deeds? A. I have never met him.

Recross Examination by Mr. Harris:

Q. Could it be Mr. Stokley? A. Well, not so far as I know.

Q. Well, so far as you know, it might be, too? A. Well, I know Mr. Stokley but I don't know him as Mr. Sawyer.

The Master: That is all I have to ask.

Mr. von Holst: May the witness be excused?

The Master: Yes.

Mr. von Holst: If the Master please, I believe that the next witness might properly be the Price Waterhouse accountant whom Mr. Harris has brought along. 1688

Mr. Harris: Mr. Simonds.

Mr. von Holst: May he be sworn?

GEORGE EDWARD SIMONDS, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. Please state your full name. A. George Edward Simonds. 1689

Q. And where do you reside? A. At 607 Juniper Road, Glen View, Illinois.

Q. And what is your occupation? A. I am a public accountant.

Q. Are you a C. P. A.? A. Yes, sir.

Q. Are you associated with any firm? A. With Price Waterhouse and Company.

Q. How long have you been a public accountant and associated with Price Waterhouse? A. Well, I have been a certified public accountant since 1931, I think, I don't re-

member exactly, but I have been with Price Waterhouse for sixteen years.

Q. And I understand you are in their employ, is that right? A. Yes.

Q. And you have been in their employ for sixteen years? A. Yes, sir.

Q. Mr. Simonds, at whose request did you appear here at this hearing? A. At the request of Mr. Behrens, the secretary of Universal.

Q. And what did he state to you as to what he required you to come here for and to testify about? A. Well, the only
1691 thing, I was to present certain information contained in the working papers relative to some of these transactions.

By Mr. Harris:

Q. In 1936? A. Yes.

By Mr. von Holst:

Q. And these working papers that you referred to, are they your own working papers? A. Yes, sir,—you mean, pardon me, what do you mean by that, Mr. von Holst?

Q. Are they papers which you yourself drew up? A. Not the—I have the whole bundle of working papers here, and I
1692 think the schedules that we are interested in are in my handwriting.

Q. Now, does Price Waterhouse audit the books of the Universal Oil Products Company? A. Yes, sir.

Q. And how long have they done that? A. Well, I think it is from 1926 through the present date.

Q. And how often is this audit done? A. Twice a year.

Q. At what times? A. At June 30th and December 31st.

Q. You have with you working papers covering what period? A. I have with me the working papers covering the December 31, 1935 examination, the June 30, 1936, and the December 31, '36.

Q. And each of those dates the papers cover the period of six months immediately preceding? A. Yes.

Q. Now, how soon after those dates of December 31, 1935, June 30, 1936, and December 31, 1936, were those working papers drawn up? A. I will have to refer to my working papers, sir, to know that.

Q. Will you do so? A. Yes, sir.

Mr. Harris: I think, if I may interpolate, what Mr. Simonds is prepared to do is to give you what he found on the vouchers and requisitions with respect to the Morgan Kaufman payments, and that I assume is 1694 what we are interested in.

Mr. Thiess: We are interested in all his working papers, now that he has got them here.

Mr. Harris: I am not going to let you look at anything that does not relate to this case. Of course, the Master can look at anything he wants.

Mr. von Holst: Then I have this to suggest, if the Master please. The witness was tendered to us to examine. Now, certainly, we are entitled to see the working papers respecting this period. It cannot be confined to the one transaction of March, 1936.

The Master: Well, anything that relates to this 1695 case.

Mr. Harris: Sure.

The Master: Yes.

Mr. von Holst: Payments to Morgan Kaufman.

Mr. Thiess: In other words, we ought to get enough of a look at those papers so that they will be intelligible.

Mr. Harris: They will be intelligible.

The Master: If they are, they are the first accountant's papers I ever read that are, to me.

Mr. Harris: They will be intelligible on this issue.

The Master: I can never understand accounts very well.

The Witness: On our working papers we usually indicate the time we start the examination and when we go off the job into the office, just as a matter of record as to the time we spend on the examination.

Now, on the December 31, 1935 examination, the examination was commenced on March 4, 1936 and completed on April 16, 1936.

By Mr. von Holst:

1697 Q. April 16th, you say? A. Yes, April 16th.

The June 30, 1936 examination was commenced August 17, 1936 and completed on September 30, 1936.

The December 31, 1936 examination was commenced March 20, 1937, and completed April 26, 1937.

Q. Now, Mr. Simonds, you have not prior to coming here interviewed either myself or Mr. Thiess, or Mr. Neuman or Mr. Poore, or anyone else——

Mr. Harris: Representing you?

By Mr. von Holst:

1698 Q. —representing the amici curiae in these proceedings, have you? A. I am not very familiar with the law. I mean, you are representing—someone will have to explain what amici curiae——

Mr. Harris: He doesn't know who the amici curiae are. We would like to have it disclosed.

The Master: Amici curiae means friends of the Court.

The Witness: Oh.

The Master: And these gentlemen together, Mr. Thiess and Mr. von Holst, are acting in that capacity, and the other counsel who are assisting on this side

of the table are assisting them. These other gentlemen represent the Universal Oil Products Company.

The Witness: No, I never have contacted—I never have seen any of the gentlemen before but Mr. Neuman.

By Mr. von Holst:

Q. When did you see him? A. He recalled to my mind yesterday that we had gone to high school together, and I haven't seen him since.

Q. Was that a long time ago? A. Well, 1922. 1700

Q. And you haven't shown these papers to any of us, have you? A. No, sir.

Q. Besides Mr. Behrens, who else have you consulted with prior to coming here, representing Universal Oil Products Company? A. With Mr. Harris and Mr. McCullough.

Q. Was that in Chicago or New York? A. That was in New York.

Q. And did you contact Mr. Behrens in Chicago or did he contact you, I mean? A. Well, I think I had better explain that. I was working on the examination at June 30th this year, and we were discussing this case generally, and I happened to read the testimony and certain parts were brought 1701 up in there about the Kaufman vouchers, and it gave me the idea to see if our working papers substantiated the information indicated in this testimony, and so at that time I found that the vouchers were substantially the same as the—as the information in my working papers. I told them about it, and so it was arranged that I should come down.

Q. Now, you say that "we were discussing", and you told "them" about it. Who is "we" and "them" in that? A. Mr. Behrens and myself.

Q. Any other representative of Universal? A. Oh, yes, I think Mr. Lindahl was there off and on.

Q. Was Mr. Lenske there? A. No, Mr. Lenske was away on his vacation. It was just last week.

Q. You said you read the testimony in these proceedings? A. Well, just Mr. Lenske's testimony.

Q. I see. Who gave you that to read? A. Mr. Behrens.

Q. When did he give you that to read? A. Oh, it was the early part of last week.

Q. And was that prior to your suggestion that your working papers might throw light on the subject? A. Oh, I was just reading it from general curiosity. Accountants have curious minds.

1703

Mr. Harris: I understand in my absence it was brought out that I and Mr. McCullough consulted with Mr. Simonds day before yesterday. I would like to ask Mr. Simonds whether or not we ourselves have yet seen the working papers.

The Witness: No, sir, but you have copies of—we have prepared copies of certain schedules.

Mr. Harris: Which you handed us.

The Witness: Well, I gave them to Mr. Behrens, and he sent them to you.

Mr. von Holst: At this stage, if the Master please, we would like to see the working papers referring to the payments to Kaufman and to the reserve, 42, 42-H,

1704

the legal reserve, that is, 42-H and 42-F, for the——

Mr. Harris: Well, now, to save your time——

Mr. von Holst: Let me finish, please.

Mr. Harris: Yes.

Mr. von Holst: For the second half of 1935 and throughout 1936.

Mr. Harris: Now, there has been prepared and handed us an excerpt, which you can use for the purpose of identifying the working papers you want to look at. I think that will shorten it up.

(Papers were produced.)

Mr. Harris: Those were prepared by Mr. Simonds.

The Witness: Yes.

Mr. Harris: Delivered to us by Mr. Behrens.

By Mr. Harris:

Q. Mr. Simonds, were those working papers of which you have given us typewritten copies of certain portions part of your semi-annual analysis of the reserve account 42-H? A. Yes.

Q. That you make every six months? A. Yes.

Q. As part of your audit? A. Yes, sir. 1706

By the Master:

Q. These numbers refer to the voucher numbers, so you could readily put your finger on that? A. Yes.

The Witness: I want to ask a question. I think that when I was speaking a while ago I made a misstatement of fact about the preparation of the December 31, 1935 examination. I was not engaged on that examination, I mean, as those will indicate. I was thinking of the '36 papers.

Mr. Harris: That was the one we thought had been made a good deal of, and we thought your attention 1707
would be particularly directed to that one.

By Mr. von Holst:

Q. Mr. Simonds, I have here four typewritten sheets. Did you prepare these? A. No, sir, it was not prepared in our office. To explain that, we made copies of these schedules from our working papers, in our office, and then took them over to Universal, where they were typed.

Q. You made longhand copies of your working papers, is that it? A. Yes, just to show the information.

Q. So that is a typewritten copy of a longhand copy——

A. Yes, sir.

Q. —which you furnished Universal. Now, are your original working papers—are the original working papers that you have with you longhand or typewritten? A. They are longhand in most cases.

By the Master:

Q. Are these exact copies of your working papers or are they your summary of them? A. What?

1709 Q. Or are they a summary of what each item indicates? A. No, those are—it is almost an exact copy, but I tell you, I wouldn't want to use those as being an exact copy unless someone compared them. I haven't compared them except in a general way by reading them over, I mean, to be truthful.

Mr. Harris: Why not get out your working sheets, then, and compare them?

The Witness: Yes, I think so.

Mr. von Holst: Well, if the Master please, I think that in any event we would want to see the working papers themselves, the originals, the longhand.

Mr. Harris: That is right, on these particular transactions, certainly.

1710 The Master: Yes, I think so.

Mr. von Holst: On this transaction.

Mr. Harris: I trust your remark does not indicate any unwillingness on our part to have that. We are perfectly happy——

Mr. von Holst: But having seen these, we reserve a request which may possibly develop to see further papers, but at this particular time we would like to see the original working papers.

The Master: We will cross that bridge when we come to it.

Mr. von Holst: Yes.

Mr. Harris: Get them out, Mr. Simonds.

The Witness: O. K., the schedule—just those schedules that are marked CC. That is our indexing number.

(The witness produced papers.)

By Mr. von Holst:

Q. Now, you are handing me a large sheaf of papers? A. Yes, sir.

Q. I just want the record to show what is being done. And you have opened it to a page marked in the upper right-hand corner in red pencil, CC, is that right? A. Yes, sir. 1712

Q. Now, in whose handwriting is this? A. That is in the handwriting of Mr. Madsen, I think his name is indicated on there, Louis—L. S. Madsen.

By Mr. Harris:

Q. Is he any longer in the employ of Price Waterhouse? A. No, sir, he is with Arthur Andersen and Company at the present time, in Chicago.

Q. They are public accountants? A. Yes, sir.

The Witness: Mr. von Holst,——

Mr. von Holst: Just a moment, please. 1713

The Witness: I wanted to—you identified that schedule as CC; all of these happen to be the same number, in each year. I don't know whether the identification with the number——

Mr. von Holst: Oh, I see. Then we will say CC, and underneath that the date, 12-31-35.

The Witness: Yes.

Mr. von Holst: And the title "Reserve for Legal Bills", Account 42-H.

The Witness: Yes, sir.

1714 *George Edward Simonds—For Amici Curiae—Direct*

Mr. von Holst: That is the document we are at present examining.

The Witness: Yes.

By Mr. von Holst:

Q. Now, referring to this sheet CC, dated 12-31-35, at the bottom of the page appears a legend, "Vouchers for these items inspected on SCH." What does that mean? A. Well, it was—I knew that that would be asked because——

Q. Well, just answer the question. A. All right, sir.

1715 This is on another schedule in the working papers where we examined all the legal bills in one place and the indexing was not completed, that was all.

Q. Well, what schedule is referred to there? A. I would have to look at the working papers to——

Q. Well, will you do so? A. Yes, sir.

Mr. Harris: Now, Mr. Master, that contains payments not only to lawyers in the Crew-Levick cases, but payments to all counsel.

The Master: Well, I think the question was simply, what is the reference "SCH."?

The Witness: The reference is PL39.

1716

By Mr. von Holst:

Q. What is PL39? A. Analysis of fees and expenses paid to attorneys and experts during six months ending 12-31-35.

Q. What are the captions on the sheet? A. Voucher number, payee, particulars, approved by,——

By Mr. Thiess:

Q. Will you go a little slower on that, voucher number, and what? A. Payee, particulars, approved by, amount of invoice, and then over two, four, six—eight columns we have

the account charged, to show the distribution, and that is over columns headed account number 16, infringement, account 17, interference, account 18, opposition, account 80, general legal, account 82, new patent expense, and then there is a subheading over three columns, other accounts, and name, over two columns, and amount, over one.

Q. And on that schedule PL are there noted the payments shown on page CC, dated—what is that date?

Mr. Harris: 12-31-35.

A. December 31, '35—yes, they are all listed there. 1718

Mr. von Holst: Now, we ask to see that schedule PL39, if the Master please.

Mr. Harris: We won't let them do that, unless with leave. We would rather the Master look at it first.

The Master: Well, the whole schedule do you want to look at?

Mr. von Holst: I think we should look at the whole schedule.

Mr. Harris: To see what we pay for patents, infringements, and so forth?

Mr. von Holst: It is perfectly satisfactory for us 1719
for the Master to look at it first and see whether we ought to.

Mr. Harris: Well, all right, let the Master see it.

(The papers were shown to the Master, and explained by Mr. Harris.)

Mr. Harris: I think what the Master might do is to take out these items that are referred to on CC and read into the record what PL shows on those items, what information. You are entitled to that,

1720 *Colloquy*

but I don't think you are entitled to browse around our business in general.

The Master: Well, the heading of the page is "Analysis of fees and expenses paid to attorneys and experts during six months ending 12-31-35". I don't think that payments made in cases other than the one we are concerned with would be relevant.

Mr. von Holst: And will the Master then read into the record everything which that sheet shows relating to payments made——

Mr. Harris: To Kaufman?

1721 Mr. von Holst: —to Kaufman and 42-H, account 42-H.

Mr. Thiess: Will you point out to the Master what they are?

The Master: I see them, yes. In this account before me from which I have read the title I find the following entries:

> 10-18-35, voucher 10095, Morgan S. Kaufman, services to date re Root Case and pending matters, approved by N, $25,000.00, carried to the Account 16, Infringements, same amount, $25,000.00. The check number is 4317.

1722

That is all I find on that page to Morgan S. Kaufman.

Mr. von Holst: Will the Master read once more, I didn't catch it, did I understand you to read carried to Account 16, Infringements?

The Master: That is right, Account 16, Infringements, for the same amount, $25,000.00.

Mr. Harris: Mr. Simonds will explain that.

The Witness: Then down at the bottom of the schedule we take the total of the items, reserve for litigation expenses for six months ending 12-31-35, we

take the $85,644.59 that was charged to that account and take it out as a red figure.

Now, if anyone wants me to explain why we do that, what we do in making examination is to go through the voucher register and pick up all the vouchers that are—all the large bills that are charged to the infringement payments in general or to these reserve accounts, and put them on the schedule so we can get them in the order that they appear. These on this schedule are very much out of order, so he may have gotten them from the invoice register or something like that, because he lists certain lawyers and 1724
then he will have all the bills right together that are any size. There is no particular reason for doing that.

By the Master:

Q. Can you tell whether this $85,644.59 includes the twenty-five thousand paid to Mr. Kaufman? A. Yes, sir, see, he has it indicated with this double check mark on these items, four items, the same that are listed here.

Q. You take out, then, the items of Judge Haight's, only Judge Haight's, Harris and Brewster? A. Brewster, 1725
yes.

Q. The eighty-five thousand is made up of the payments to Brewster and Brewster, services rendered—this doesn't seem to be this case. A. No, it isn't.

The Master: Case of Derby Oil Refining Company, $5,000.00, Thomas G. Haight, services re Winkler-Koch Engineering Company and Root Refining, fifth month, first, 1930, to 10-21, 1935, $55,000.00.

Thomas G. Haight, expenses in connection with the above, $6,644.59.

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And then $25,000.00 to Morgan S. Kaufman, which I mentioned before.

Mr. von Holst: May I ask, does the charge of the $25,000 to Morgan S. Kaufman, to Account 42-H, reserve for legal bills, appear upon that sheet PL39?

The Master: Perhaps I should add that the $85,654.59 in red which is taken out of this column is said to be reserve for litigation expenses for six months ending 12-31-35, and the letter "L" appears.

By the Master:

1727 Q. What does that mean? What does the letter "L" mean? A. Oh, that is a bracket.

Q. Oh, a bracket, I see, not an "L".

The Master: Now, what is your question, Mr. von Holst?

Mr. von Holst: Whether on that sheet, PL39, appears any indication of the charge of $25,000.00 paid to Kaufman to account 42-H, reserve for legal bills. The reason I ask, if the Master will recall, Mr. Lenske testified at his deposition that that payment was charged to 42-H, reserve for legal bills.

1728 Mr. Harris: It was, CC shows that. This shows that.

The Master: The only thing that appears here on this page is that this item was apparently taken out of this account, and it is noted that it was reserve for litigation expenses for six months ended 12-31-35.

Mr. Harris: Then when you get over here——

Mr. von Holst: Just a moment, Mr. Harris. May I ask a further question? I think the witness testified, did you not, Mr. Simonds, that that $25,000.00 appeared as carried to Account 16, Infringements?

The Master: It appears in this, it was so carried the one I just read.

Mr. von Holst: Where does it so appear, on the PL39?

The Master: On the sheet I have just read to you it so appears, and then at the bottom it appears to have been taken out along with other charges.

By Mr. von Holst:

Q. Mr. Simonds, was that $25,000.00 then posted to Account 16, Infringements? A. You mean on these—— 1730

Q. Is there anything there to indicate whether it was posted to that account?

Mr. Harris: You mean on the books of the company?

The Master: On this sheet you mean, don't you?

Mr. von Holst: On that sheet.

A. No, there is nothing to indicate that it was posted to 16—well,——

By Mr. von Holst:

Q. Well, in your audit, Mr. Simonds, did you consider that payment as charged to account 16 or as charged to 42-H? A. 42-H. 1731

Q. And where does that appear? A. That appears on Schedule CC.

Mr. Thiess: In what way?

Mr. Harris: That is an analysis, 42-H, the examination of the record on the books of the company, isn't that right?

The Witness: Yes, sir.

Mr. Harris: You got that from the books of the company.

Your Honor, as I understand what the witness has said, this schedule CC is taken from the books of the company.

Mr. Thiess: Well, you don't want this on the record, do you?

Mr. Harris: Yes, I understand the witness to have said—I am explaining to His Honor what I understand the witness testified—that CC is taken from the records of the company. There is a foot note on CC that for the purpose merely of examining the vouchers on those items those vouchers had been ex-
1733 amined in connection with preparation of PL39.

By Mr. Harris:

Q. Is that right? A. Yes, sir.

Mr. Harris: That is all there is to it.

By the Master:

Q. Well, what is this CC that I see before me, Mr. Simonds? A. That is our analysis of the transactions in the reserve for legal bills for this six months period.

Q. Yes. A. And in addition, the person preparing the
1734 schedule has put in the analysis from the beginning of the year, just as a matter of information, showing the provisions made during the first six months, and then he brings it down, he says balance per books and P.W. at June 30, '35, and then he analyzes it down to the end of the year.

Q. And he adds a credit item of $5,000 a month? A. Yes.

The Master: And then there appears in this schedule the following items—shall I read them?

Mr. Harris: They have them.

Mr. Neuman: We have seen them.

The Master: Very well.

By Mr. von Holst:

Q. Now, let me ask you, Mr. Simonds, in the audit for the period ending December 31, 1935,—— A. Yes, sir.

Q. —does the balance in Reserve for Legal Bills show an amount of $118,591.52?. A. Yes, sir, I have—that figure will probably appear several other times in my working papers, from the trial balance and report.

Q. Well, is it on the balance sheet in your audit? A. Yes, sir.

Q. Have you got it there? A. Yes, sir. In answer to that question, on the draft of our report I am looking at 1736
the balance sheet there, and it shows under Current Liabilities, "Reserve for Litigation Expenses", $118,591.52.

Mr. Harris: You might show that to Mr. White.

(The entry was shown to the Master.)

By Mr. von Holst:

Q. Mr. Simonds, referring again to PL39 will you state why the $25,000.00 payment to Kaufman is charged to Account 16 when it appears that on the whole audit it properly belongs in 42-H? A. Oh, I can't explain why that was put on this schedule in this way, because I didn't prepare 1737
the schedule.

By Mr. Harris:

Q. Can you explain from your experience why that would be done? A. I am sorry to say I cannot explain.

Q. Well, isn't that an analysis of all payments to attorneys and experts? A. Yes, sir.

Q. And isn't it taken out by these double red check marks from 16 and put over to 42-H? A. Yes, sir, we do that to tie out——

By Mr. von Holst:

Q. My specific question is, why was it charged to Account 16 in the first place? A. Because it was an infringement payment.

Q. In other words, in PL39 it appears as charged to Account 16 because it was a payment in an infringement suit, is that right? A. Yes.

Q. Now, is there anything in your papers to show why it was transferred out from that account and put in 42-H, if that is the fact? A. Yes, sir, it was transferred out be-
1739 cause in preparing, making this analysis, he had included amounts that were not in Account 16 on the schedule, and in order to tie out his schedule with the profit and loss—with the Account 16 that was on the books, he had to take those amounts out.

By Mr. Harris:

Q. In other words, PL39 is not, Mr. Simonds, a copy of the books of the company at all? A. No, sir.

By Mr. von Holst:

1740 Q. But the audit was adjusted to the books of the company wherein this $25,000.00 was paid—was charged to 42-H, Reserve for Legal Bills, was it not? A. You mean—I don't know what you mean by "adjusted".

Q. Well, changed, then, or transferred to conform with the way the books were kept at Universal? A. No.

Q. Well, let me ask you this, can you tell from your papers how that $25,000.00 was, first of all, did, first of all, appear on Account 16, Infringements? Isn't that because it was a fee paid to lawyers in a case? A. It is in this analysis because it is a fee paid to lawyers and other experts.

Q. So the man that made that analysis considered this $25,000.00 an infringement expense and therefore charged it to Account 16, is that right? A. He didn't charge it.

Q. Well, he carried it in that? A. He showed it in his analysis as Account 16, Infringements, yes, sir.

Q. Yes.

Mr. Harris: Then he took it out,——

Mr. von Holst: Now,——

Mr. Harris: —to reconcile the books, that is all.

By Mr. von Holst: 1742

Q. Do you know whether that was taken out of Account 16 because on the books of the Universal it did not appear in Account 16 but it appeared in 42-H? A. That is right.

Mr. Harris: That is right.

Mr. Neuman: Why don't you let the witness testify?

Mr. von Holst: I would like to make the same suggestion. We can either examine the witness or Mr. Harris,——

Mr. Harris: All right.

Mr. von Holst: —but if we have both we won't get anywhere. 1743

Mr. Harris: When you make such a mystery out of something that is perfectly clear you confuse the Master's mind on the difference between what is in the books of the company and what some accountant puts on the sheet of paper in analyzing total charges. You shouldn't try to confuse the Master or the witness. You don't confuse me.

By the Master:

Q. Might I ask this question, Mr. Simonds? Is there anything in your working papers which would show why

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some charges for infringement suits went into 42-H rather than into 16? A. There is nothing to—it was all done because that was the way it appeared on the books. There is no particular reasoning for it.

Q. You don't know of any reason? A. No.

By Mr. von Holst:

Q. When you say that is the way it appeared on the books, you mean that is the way it appeared on the books of Universal, is that right? A. Yes, sir.

1745 Mr. Harris: In view of the fact the Master asked for that, if Mr. Simonds does have any further explanation I think he should be allowed to make it.

The Witness: Yes.

Mr. Harris: From his general familiarity with the way charges were made to 42-H.

By the Master:

Q. Do you have any explanation of that? A. This reserve had been set up in prior years to take care of these large legal bills that came through in the suits, because it was my understanding that a lot of these lawyers came
1746 along several years later and would bill the company for past services, so it was set up as a matter of accounting to make monthly provisions to the P. and L. and set up this reserve to take care of these expenditures.

Q. But you know of no method by which the bills which were to be charged against that reserve were selected? A. No.

By Mr. von Holst:

Q. And isn't it a fact that large bills were also charged to Account 16? A. Well, I—well, in this particular period there are no large amounts that were charged to 16.

Q. What is the largest amount charged to 16? A. $6,000.00.

Q. For what period? A. It isn't indicated here.

Q. Now, referring to this sheet CC,—— A. Yes, sir.

Q. —formerly spoken of, where was the information obtained following the dates and preceding the payments, for instance, 10-18-35, U10095—by the way, that is the voucher number, isn't it? A. Yes, sir.

Q. And then it says: Paid to Morgan S. Kaufman for services to date in connection with the Root case and pending matters per authority of Mr. J. J. Mitchell. Where was 1748
that obtained from? A. Well, the date and the voucher number would be obtained from the account 42-H, and then the information would be inserted in from the voucher.

By Mr. Harris:

Q. The voucher itself? A. The voucher itself.

By Mr. von Holst:

Q. Now, where there was a bill would your analysis show that the voucher was issued in payment of the bill? A. Well,——

Q. Where there was no bill—— A. Yes, sir. 1749

Q. —would your audit indicate that there was no bill rendered? A. In this particular case it was indicated, there is a mark on this schedule PL39 that shows no bills, and against the Kaufman payment, no bills attached to vouchers, verbal authority said to have been issued by H. J. Halle.

Q. And that is for which payment? A. That is the Morgan S. Kaufman.

Q. $25,000.00? A. Yes, sir; and then in addition we examined the check on that.

Q. So that the schedule PL39 shows that the payment was said to be on the verbal authority of H. J. Halle, is

that right? Is that what you read? A. Well, that applies to other payments, too.

Q. Yes, but it includes the $25,000.00 payment to Mr. Kaufman? A. Yes.

By the Master:

Q. What was the date of that, Mr. Simonds? A. The date of——

Q. The entry. A. Well, this 10-18 out in front on this Morgan Kaufman I think indicates the date of payment because he has there where he has looked up the checks on
1751 some of them, and some of them he hasn't.

By Mr. Harris:

Q. In this case did he? A. Yes, he looked up the check to see that it was paid to Mr. Kaufman.

By Mr. von Holst:

Q. And he indicated the date 10-18-35, did he? A. He indicated the date, 10-18-35—just the date 10-18.

By Mr. Harris:

Q. Well, there is 1935 at the top of the column, isn't
1752 there, top of the sheet? A. Well, there is a 1-12, too, here, which would be '36.

By Mr. von Holst:

Q. Now, on sheet CC it states that the authority for that payment is per authority of J. J. Mitchell, does it not? A. Yes, sir. Now, that is also indicated on the other schedule, that it was per authority of Mr. Mitchell.

Q. What other schedule? A. PL39.

Q. I thought you said that PL39 indicated that it was on the authority of Mr. Halle? A. Shall I read the description on the schedule again?

Q. Yes, if you will. A. There is a red tick mark, accountant's tick mark here, that says, no bills attached to vouchers, verbal authorization said to have been issued by H. J. Halle. It doesn't indicate who he got that information from or—that is the accountant's observation.

Q. Well, that "said to have been" must have emanated from Universal, wouldn't it? A. Yes, sir.

Q. Now, on that schedule PL39 and also on CC—— A. Yes, sir.

Q. —there is noted a payment to Thomas G. Haight of $55,000.00? A. Yes, sir. 1754

Q. Is there any indication as to whether a bill was attached or not? A. No, there is no indication here that there was a bill attached, but I would assume that where he didn't have a bill he made an indication of it.

Q. In other words, there is no indication opposite that charge to Thomas G. Haight that no bill was attached, is that right? A. That is right, sir.

Mr. Harris: We concede that a bill was attached in those cases of Judge Haight's.

By Mr. von Holst:

Q. Does that payment to Judge Haight of the sum of 1755
$55,000.00 appear to have been approved by Halle, by H. J. Halle, on either schedule PL39 or—— A. It is indicated——

Q. —sheet CC? A. —approved by Mr. Halle.

Mr. Harris: We concede, Mr. von Holst, that the bill itself contains Mr. Halle's initialed approval.

Mr. Thiess: In view of the fact that you say you concede that that appears on the bills, and the fact that you are going to give us those bills later on, I suggest that it might help us in our examination if we got a copy of those bills at the present time.

1756 *Colloquy*

Mr. Harris: Well, in view of the fact that I concede it, I don't show it to you; I thought that is the reason I conceded it.

Mr. Thiess: Oh, no, we have asked you to produce those bills. You said you were going to.

Mr. Harris: I was only questioning the reasoning. It seemed to me that would be reasoning for not showing it.

Mr. Thiess: The reason is that it would expedite if we got those bills at the present time.

1757 Mr. Harris: We have not had photostats made, but, Your Honor, those are the bills of Judge Haight and his firm in the Crew-Levick and Root cases.

(The bills were produced.)

The Master: Yes, I understood you were going to produce them.

Mr. Harris: And all payments were not covered by bills, but these are the bills that we have.

(Papers were shown to counsel.)

Mr. Harris: In some cases there were payments on account. Judge Haight rendered no bill in the Crew-Levick case because he died prior to that time,

1758 and I understand the bill was sent by his firm subsequent to his death.

Mr. O'Mara: No bill, just a settlement.

Mr. Harris: Settlement.

Mr. O'Mara: Without a bill.

Mr. Harris: Without a bill.

Mr. O'Mara: And you arranged that with Mr. Halle personally.

Mr. Harris: I did.

The Master: You were in Judge Haight's firm. Mr. O'Mara?

Mr. O'Mara: Yes, sir.

Mr. Thiess: There is quite a deal of material here, and I presume we can keep these over the noon hour to look at them.

(Discussion off the record.)

Mr. Thiess: I will be responsible for them.

By Mr. von Holst:

Q. Then I understand, Mr. Simonds—I may have asked you this already, but I just want to be sure—that the information appearing on CC opposite the date of payment and opposite the voucher, this descriptive matter, for instance, paid to Morgan S. Kaufman for services to date, and so forth, was taken from the voucher, is that right? A. Yes, sir. 1760

Q. And is it a copy of what appears on the voucher? A. Oh, no, it is just our excerpt of the information shown on the voucher.

By Mr. Harris:

Q. Mr. Simonds, is the requisition and the distribution sheet attached to the voucher? A. Well, that is a kind of a question that—the voucher, we usually refer to the voucher as being the whole thing. 1761

Q. That is right. A. The whole file, there is a voucher there, it is everything that is attached, the voucher, there is the voucher jacket and the supporting documents there, and we refer to that as the voucher.

By Mr. von Holst:

Q. Well, in your examination of the Universal's records what do you term the voucher from which you get the information to put on these sheets? A. Well, we either get it from the bill or from this requisition form if there is no bill.

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Q. What do you mean by requisition form? A. Well,——

Mr. Thiess: Have you got that exhibit here?

Mr. Harris: We have one here.

Mr. von Holst: Just a minute, I want his unaided recollection, if I may.

By Mr. von Holst:

Q. What do you call a requisition form?

Mr. von Holst: Or, at least, not aided by show-
1763 ing him a document here.

A. Well, it is a request for a check. It is a check requisition form.

By Mr. von Holst:

Q. And what else is there? A. Well, a bill will have no check requisition.

Q. That is right, but where there is no bill and you are going to get the information to put on your sheet, what else do you have besides the requisition in the folder, what you call the voucher folder? A. Well, just the voucher cover, that is all that would be there.

1764 Q. Don't you have a copy of the slip which accompanies the check to the customer? A. Well, I think——

Q. Remittance slip. A. Well, that is on the—that is—there is a carbon copy of that on the back of the voucher, as I understand it?

Q. Don't you have also a distribution record which has a front and back, and on the front of it the remittance slip, and on the back of it the distribution record? A. Yes, you have that.

Q. Do you have any material or writing or anything on the back of the voucher requisition? A. On the back of the voucher record?

Q. Yes. A. No.

Q. And you look at all three things, do you, when you get this information to put on the—— A. Well, you may——

Q. —sheets? A. —or may not. You get your voucher and you see that everything there—is there that is charged to this account and you get your explanation off of it, see who it is approved by, and all that.

Q. Now, will you refer to sheet CC dated June 30, 1936? A. Yes, sir. You want to see this?

Q. Yes. A. You haven't seen this.

Q. Now, is this sheet in your handwriting? A. Yes, sir. 1766

Q. This sheet CC being dated—— A. 6-30.

Q. —6-30-36, and entitled "Reserve for Legal Bills". Now, was there in this instance also a schedule corresponding to the schedule PL39 that you previously described? A. Yes, sir.

(The witness located the schedule.)

The Witness: Yes, sir.

By Mr. von Holst:

Q. And what is the title of that schedule? A. This is analysis of attorneys' and experts' fees and expenses paid during the six months ending 6-30-36. 1767

Q. Does it have any title corresponding to PL39, as in the previous year?

By Mr. Harris:

Q. That is the same title, isn't it? A. It is PL23.

By Mr. von Holst:

Q. That is what I wanted to get. Now, on PL23, does that payment of $10,000.00 to Morgan S. Kaufman, voucher number 3120, appear? A. No, sir.

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Q. It does not appear at all on that analysis? A. No.

Q. And in your working papers for that period, in any of that, is there any other reference to that payment, other than appears on CC? Will you look through it carefully and ascertain? A. Oh, yes, there are references. There is—this will be an all-day job, if you want me to look through the whole thing.

Mr. von Holst: I submit it is important, Your Honor, to find out whether there is any other designation on it anywhere in the working papers.

1769 (The witness examined the file.)

The Witness: Here is a reference in our report to it.

By Mr. von Holst:

Q. What is the date of that report? A. The draft is dated October 20, 1936, and then the 20 is scratched out, and there is no other date inserted here. This is just the draft.

Q. That is the draft report? A. Yes, sir.

Q. In whose handwriting is it? Or is it typed? A. It is typed.

Q. Do you know who drew it? Is it yours? A. The typ-
1770 ing?

Q. I mean, did you prepare it? A. No, sir. Now, let's see, I will look at the draft. To explain the procedure, we go into the office and make up the analysis of certain accounts and then we usually dictate the reading matter and give the stenographers an analysis of the accounts, to save all that. You can't dictate schedules. It is mentioned in this case in the draft report. Now, do you want me to go on and see if I can find it in other places?

Q. Now, will you read what the reference is in full in that draft report, dated as you indicated? A. Yes. The reserve for litigation expenses represents estimated provi-

sion for fees and expenses of counsel in the Winkler-Koch and other suits. The changes in the reserve during the period were as follows—now, a word of explanation here. At the end of the year we give them an analysis for the whole year, in certain of the accounts, to make the December 31st reports a record for the whole year, and we also include in there certain information for the six months period.

Q. And you are continuing reading now? A. Balance at January 1, 1936, $118,591.52. Add amount provided out of earnings during the six months ended June 30, 1936, $30,000.00. And then the figure carried down is $148,591.52. Deduct payments during six months ended June 30, 1936, as 1772
follows:

H. M. Morris	$ 5000.00
Thomas G. Haight	1000.00
Morgan S. Kaufman	10000.00

That is extended out to $16,000.00. Then the balance at June 30, 1936, $132,591.52.

Q. Is there any explanation of why that deduction is made? A. Not in here.

Q. Does the explanation of that deduction appear anywhere?

1773

Mr. Harris: I don't know what that means.

A. I don't know what you mean.

By Mr. von Holst:

Q. Well, just read that last thing that you stated there. A. Balance at——

Q. Yes. A. —June 30, 1936, $132,591.52.

Q. Well, read back a little bit. I thought you said something about transferring it out, or something, deducting the amount of Morris, Haight and Kaufman payments.

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Mr. Harris: He said deduct charges.

A. Oh, deduct—well, we have add—we have balance, and then we add our provisions, deduct payments during six months ended June 30, 1936, as follows.

Mr. von Holst: Oh, I see.
The Witness: Practically the same.

By the Master:

Q. It doesn't say what those payments were for, does it?
1775 A. No.

Mr. Harris: No, but the analysis, the working sheets show that.

By Mr. von Holst:

Q. Now, will you proceed and see if you find any further reference to this ten thousand payment to Kaufman in March, 1936.

(The witness examined the records.)

A. No, sir, I see no reference.

1776 *By Mr. von Holst:*

Q. Other than that you have called attention to? A. Yes, sir.

Mr. Harris: Mr. Master, may it appear that this answer is given after the witness has examined the entire working papers of the audit for the first six months of 1936—consisting of several hundred pages?

The Witness: Well, I don't know—yes, that is probably right.

Mr. Harris: Certainly a couple of hundred pages.

The Master: Very well.

By Mr. von Holst:

Q. Now, on sheet CC,——

Mr. Harris: For the first half of 1936.

By Mr. von Holst:

Q. —dated June 30, 1936, where did you get the information appearing opposite the name, Morgan S. Kaufman, which information reads, "1936 retainer re Crew-Levick suit"? A. I obtained that from the voucher.

Q. Now, is that your own personal recollection of that particular item, that you obtained it from the voucher, or is it your assumption—— A. Sir? 1778

Q. —from looking at this sheet that you must have got it from that voucher? A. It is my assumption from looking at this sheet.

By Mr. Harris:

Q. What is that assumption based on?

Mr. von Holst: Just a minute.

Mr. Harris: All right.

Mr. von Holst: I would like to continue the examination. 1779

The Master: Mr. von Holst should be allowed to continue.

Mr. Harris: Excuse me.

By Mr. von Holst:

Q. Now, to the right there, and under the column "Approved by", still referring to the same sheet, you have got the initials, M. C.? A. Yes, sir.

Q. What do those initials stand for? A. Macauley Carter.

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Q. And that indicates to you, or, rather, this sheet indicates that that payment was approved by Macauley Carter, does it? A. Yes, sir.

Q. Where did you find the source for marking that particular payment "Approved by M. C."? A. The voucher.

Q. Is it not possible that you may have been told by somebody in Universal's employ that it was approved by M. C., by Macauley Carter? A. No, sir, I would have indicated that on the papers.

781 Mr. von Holst: If the Master please, I should like to have the photostats that are in evidence of the voucher and voucher requisition, that is, Amici Exhibits 10, 11, 12 and 13. Have we those here?

The Master: You mean the——

Mr. von Holst: Those exhibits, they are photostats of the original——

The Master: Well, aren't they simply attached to the record?

Mr. von Holst: Oh, the record before the Master. Well, is it agreeable that I use my copies?

Mr. Harris: Surely.

Mr. von Holst: They are photostats.

782 Mr. Harris: Surely.

Mr. von Holst: Very well, that will save time.

The Master: I think that is what was done originally, they were just attached.

Mr. Harris: What are you showing him, first?

Mr. von Holst: I am showing him all three of them together.

Mr. Harris: Exhibits what?

Mr. von Holst: Exhibit 10,——

Mr. Harris: 10 is a part of the voucher is it?

Mr. von Holst: Well, I will explain that.

Mr. Harris: 11, 12 and 13, I think.

Mr. von Holst: That is right, I am showing him 11, 12 and 13.

Mr. Harris: That is right.

By Mr. von Holst:

Q. Now, I show you photostats of certain documents that have been marked in this case as Amici Exhibit 11, Amici Exhibit 12 and Amici Exhibit 13.

Mr. Harris: Might show him 14, too, if you don't mind, because that is signed by Mr. Carter.

1784

By Mr. von Holst:

Q. I also show you 14. A. I didn't see the check.

Q. You didn't see the check?

Mr. Harris: I thought he said earlier that he verified all these payments by looking at the check.

The Witness: No, that was in the other.

Mr. Harris: Oh, not this one. I see, all right.

By Mr. von Holst:

Q. So referring merely to Amici Exhibits 11, 12 and 13,—— A. Yes. 1785

Q. —now, does Amici Exhibit 11 look like the requisition vouchers that you examined in the Universal office—— A. Yes, sir.

Q. —all during these years? It is their regular form, isn't it? A. Yes, sir.

Q. And it is a fact, isn't it, that Amici Exhibit 12 is one side of a sheet of paper, of which Amici Exhibit 13 is the reverse side? A. Yes, sir.

Q. Is that correct? And Amici Exhibit 11 is the voucher requisition, is it not? A. Yes, sir.

Q. And Amici Exhibit 12 and 13 is the voucher, that is to say, the front and back side of the voucher? A. Yes.

Q. And Amici Exhibit 12 containing a carbon copy of the remittance slip that goes to the customer? A. I understand that that is the procedure.

Q. And posting data below; and Amici Exhibit 13 being the distribution record? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Now, will you refer to those three exhibits and see where, if anywhere, any approval by Macauley Carter appears thereon? A. Here (indicating).

By Mr. Harris:

Q. On Exhibit what? A. On Exhibit 11.

By Mr. von Holst:

Q. Where is that? A. This big scrawl through there (indicating).

Q. Well, are you familiar with his initials? A. Yes, sir.

Q. You mean the scrawl appearing on the second line? A. Well, it appears all over the thing. I think if you had the original here you could see how this thing follows through.

Q. Yes, unfortunately we haven't the original at this time. Now, it doesn't appear, does it, on either of the other documents, that is, the initials of Macauley Carter do not appear on Amici Exhibit 12, do they? A. No, sir.

Q. Nor on Amici Exhibit 13? A. No, sir.

Q. Now, for this period shown by CC dated June 30, 1936, I believe you stated that there is an analysis of attorneys' fees corresponding to PL39 in the previous period, is that right? A. Yes, but not prepared in the same manner.

Q. Well, for this period 6-30-36, that is to say, the period immediately preceding that, will you turn to your analysis of the attorneys' fees? A. Yes, sir.

Q. In what way does it appear, that is to say, is there any mention of the names of suits? A. Well, on some of the attorneys it is mentioned.

Q. Which attorneys are mentioned in connection with suits?

Mr. Harris: Well, I object to that, Your Honor, unless it has to do with this inquiry. Your Honor can look at them all you want, but I don't think we should 1790
disclose all of our litigation.

The Master: Well, you want to know whether attorneys other than Mr. Kaufman were referred to?

Mr. von Holst: If I may make the point, in the preceding period the Master will recall that on this PL39 there was an analysis of the attorneys' fees, and Kaufman——

The Master: Yes.

Mr. von Holst: —was identified with the Root case. Now, here there is also for this period of the first six months of 1936 an analysis of attorneys' fees,——

Mr. Harris: But not including those on 42-H. 1791

Mr. von Holst: —and Kaufman's name does not appear, now, in spite of the fact that on CC for this same period his name appears in connection with the Crew-Levick case. Now, that is what I am seeking to inquire into.

By Mr. von Holst:

Q. Why is that?

Mr. Harris: Well, the witness has already said.

Mr. Thiess: Will you please let the witness testify?

Mr. Harris: I am going to tell the Master what the witness has testified to.

Mr. Thiess: The Master has heard the witness.

Mr. Harris: All right, I will remind the Master that the witness has testified that the previous audit was not made by him personally, this was made by him personally, and he followed a different routine. Now, what Mr. von Holst did ask the witness, if he wants that, is why he kept the accounts on a different theory, but I don't think we ought to let him browse, let Mr. von Holst browse through all our accounts.

1793

The Master: I don't think the names of other counsel are important. What is it you want to develop here, Mr. von Holst?

Mr. von Holst: If in these other suits counsel's names appear in connection with those suits the question is pertinent, why didn't Morgan Kaufman's name appear in connection with the Crew-Levick case.

Mr. Harris: Because his name wasn't on the other account.

The Master: Well, you can ask him that question.

Mr. von Holst: Will you read that question?

1794

(The question was repeated by the reporter as follows:

"Mr. von Holst: If in these other suits counsel's names appear in connection with those suits the question is pertinent, why didn't Morgan Kaufman's name appear in connection with the Crew-Levick case?")

By Mr. von Holst:

Q. On the analysis of attorneys' fees that you now have before you for the period of the first six months of 1936.

Mr. Harris: PL23. Well, now, I insist that the witness be allowed to answer that "why" question completely.

The Master: Very well.

A. Well, I will probably have to explain how I go about doing this. In this year I went through the voucher register and picked up all of the items that were charged directly to infringement, interference, opposition, general legal, new patent expense, and I have these other accounts to take in certain amounts, that some of the bills are spread over several different accounts, and then I probably already prepared 1796
the analysis of the reserve for legal bills, and I didn't need the information.

In later years I have analyzed, attempted to put all the legal bills on one place, and then show the account charged, and then I show 42-H off to the side. There is no explanation for the way one accountant will prepare certain information. It is for our own information.

By the Master:

Q. Well, do you have any information either from your records or from anything told you by the Universal Company as to why certain attorneys' bills were put in one account and some in the other? A. No, there is no particular 1797
explanation for that, no. That was at their discretion.

By Mr. Harris:

Q. But it is with all clients, isn't it, a matter of their discretion as to what accounts they charge? You merely audit the accounts—— A. Yes.

Q. —to show that they are correct?

By Mr. von Holst:

Q. Well, don't you have to justify your audit in charging certain items to certain accounts? A. Well, in the case of

Universal we render a very complete report of what has gone on in the accounts, or set out what they have done, like this particular reserve and the payments that have been charged there, as indicated by the records.

Q. Now, at the end of the year, on these reserve accounts, 42-H, 42-F,—— A. Yes.

Q. —I understand from Mr. Lenske's testimony, which you have read, that there was no adjustment made of those reserve accounts at the end of each year, but that the balance was simply carried forward, is that right? A. That is right.

Q. Now, in showing the amount carried forward at the
1799 end of the year does your audit, or did your audit show what justification there was for carrying that account forward, that is to say, what bills, legal bills, were expected to be paid, and to whom, in order to justify carrying forward these large balances? A. No, sir, except our experience has been that they have had very large bills come through, as you can see.

Q. Well, in that connection I call your attention to these typewritten sheets that you have given us. A. Yes.

Q. And for the period, for instance, of June 30, 1936, ending on June 30, 1936; you have a balance of $148,591.52 in reserve for legal bills? A. What?

Q. Isn't that right? A. No, sir, that is just the figure that
1800 I carried down.

Q. Oh, the balance, I am sorry.—— A. Yes.

Q. —is $118,591.52, is that right? A. Yes, sir.

Q. That was for the beginning of the period? A. Yes, that was the balance at the beginning of the period.

Q. And against that during the period there was only sixteen thousand—— A. Yes, sir.

Q. —charged, is that right? A. That is correct.

Mr. Harris: Of course, you recall the previous six months there was eighty-five thousand charged against it.

By Mr. von Holst:

Q. Similarly, for the period ending December 31, 1936, you had a balance at the beginning of that period of $132,591.52, did you not? A. Yes, sir.

Q. And during that period you charged $26,831.35, is that right? A. Yes, sir.

Q. Now, wasn't the amount carried forward greatly in excess of amounts that were charged against it? I mean, wasn't the amount set up at the beginning of the period greatly in excess of what was actually found to be paid out of it?

Mr. Harris: Res ipsa loquitur. 1802

A. Well, I don't know, that is nothing in my judgment. That is the company's judgment.

By Mr. von Holst:

Q. In other words, you don't seek to justify those large balances at all? A. No, we have no way—we have no way of telling what the bills are going to be or what period they will cover.

Q. Well, now, as an auditor can't you ascertain from the responsible people whose books you are auditing what the probable expense will be for legal bills in the next period, so as to see whether the amount set up as a reserve is in your 1803
judgment as auditor justifiable? A. It wasn't necessary to do that in this case.

Q. Why? A. Well, it was the reserve that they had set up, and that was the balance, they had made these provisions for a certain purpose.

Q. Well, you verify other reserves, such as the bad debt reserve, the tax reserve and the depreciation reserves, don't you? A. Yes, with a fair degree of accuracy, yes.

Q. But you attempted no such analysis or verification of the reserve for legal bills? A. No, and it may be possible that there were other items of the same nature at that time.

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By the Master:

Q. Well, you had nothing to do with the amount of the reserves, or their purpose, you were simply there to audit the books, is that right? A. Yes, that is all.

By Mr. von Holst:

Q. Now, isn't it a fact that these reserves appear in the annual audit as liabilities? A. Yes, sir.

Q. And isn't it your job as auditor to ascertain that those liabilities are justified? A. Well, now, you are getting into
1805 accounting—you are getting out of my scope. I am an employee of Price Waterhouse and not a partner of Price Waterhouse; but for your information, here is our opinion, if this will help. In our opinion, based upon the foregoing examination, and subject to the explanations contained herein, the accompanying balance sheet, and so forth; we make these explanations of the reserve.

Mr. Harris: That "and so forth" is that it correctly sets forth the condition of the company.

The Witness: Oh, well,——

By Mr. von Holst:

1806 Q. So that you do have in those working papers before you an explanation of these reserve accounts, is that right? A. Yes, sir.

Q. Now, will you give us the explanation of the reserve account 42-H and 42-F for the year ending December 31, 1935?

Mr. Behrens: Which one do you want? There is only one sheet.

The Witness: That is right, it would be 42-H for that period, because 42-F wasn't used, as I said, until March, 1936.

The Master: You are starting on a different year, now?

Mr. von Holst: I am going back to the beginning, to find out what this report is on the reserve accounts.

Mr. Harris: He has read it for the first six months of '36. You had that read into the record.

Mr. von Holst: Well, I would like to ask the witness.

By Mr. von Holst:

Q. Have you anything there as an analysis and report of the reserve account 42-H for the year 1935? A. Oh, 1935, 1808
for the year 1935 our report contains an analysis of that.

Q. And what does that analysis show?

By Mr. Harris:

Q. You are reading from a draft of the report? A. I am reading from a draft of the report.

Q. Read it. A. The reserve for litigation expenses represents the estimated provision for fees and expenses of counsel in the Winkler-Koch and other suits. The changes in the reserve during 1935 were as follows:

Balance as of January 1, 1935.....		$144,236.11
Add amount provided out of earnings dur-		1809
ing the year ending December 31, 1935..		60,000.00
Brought down, figure carried down of..		204,236.11
Deduct payments during 1935 as follows:		
Morgan S. Kaufman....	$25,000.00	
Thomas G. Haight.....	55,644.59	
R. R. Brewster.....	5,000.00	
Carried out		85,644.59
Balance at December 31, 1935.....		$118,591.52

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By Mr. Von Holst:

Q. Now, have you a similar report for the year ending December 31, 1936 of the account, Reserve for Legal Bills, which I understand from Mr. Lenske began as 42-H and then was changed during the year in March of that year, to 42-F? A. Yes. Well, now, this is quoting from the draft report, the draft of the report for the December 31st, the reserve for litigation expenses represents the estimated provision for fees and expenses of counsel in the Winkler-Koch and other suits. The changes in the reserve during the
1811 period were as follows:

Balance as of January 1, 1936		$118,591.52
Add amount provided out of earnings during the year ended December 31, 1936		60,000.00
Figure brought down of		$178,591.52
Deduct payments during 1936, as follows:		
H. M. Morris	$ 5,000.00	
Thomas G. Haight	7,820.05	
Morgan S. Kaufman	25,000.00	
Hughes, Schurman and Dwight	5,011.30	42,831.35
Balance at December 31, 1936		$135,760.17

1812

Q. Now, will you turn to your draft report for the period ending June 30, 1936? A. Yes, sir.

Q. And read into the record, without stating names or figures, the matters there set forth relating to your schedule PL23?

Mr. Harris: Well, that is not a reserve. He won't have that in there.

The Witness: I don't understand.

By Mr. von Holst:

Q. Well, does your report for that period refer to your schedule PL23? A. No, we wouldn't refer to a schedule in the report.

Q. In other words, the report is at the end of the year? A. No, it is at June 30th.

Q. June 30th, and you make no reference in that report to the schedule PL23. A. Oh, that would be meaningless.

Q. Why? A. Well, PL39 doesn't mean anything to anybody but an accountant.

1814 The Master: You mean an analysis of the legal charges, don't you?

By Mr. von Holst:

Q. Well, have you an analysis of the legal charges shown on PL23 in your report for the period ending June 30, 1936? A. No, sir.

Q. Have you any such report for the whole year 1936? A. No, sir.

Q. For the year 1935? A. No, sir.

By Mr. Harris:

1815 Q. Or any other year, ever? A. No.

Mr. von Holst: Do you wish to adjourn?

The Master: Yes.

Mr. Thiess: I think we better, Mr. Lord will be in here at two-thirty.

The Master: We will adjourn until two o'clock if that is agreeable.

Mr. Harris: We would like this witness completed before we take Mr. Lord, because this man has to go back to Chicago.

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(Discussion off the record.)

Mr. Harris: We are not going to consent to witnesses being called off and on.

(Discussion off the record.)

The Master: Are you all right?

Mr. von Holst: I understand that Mr. Thiess asked Mr. Lord to come at two o'clock tomorrow and he is agreeable to doing so.

The Master: Oh, very good.

1817 Mr. von Holst: Under those circumstances may I wait until he arrives?

The Master: Yes, sir.

Mr. Harris: You haven't received those papers from Mr. Gahagan, have you?

The Master: No, I haven't. I can't understand why they don't come.

(Discussion off the record.)

(Recess, one until two o'clock P. M.)

1818 AFTER RECESS

Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae (Continued)

Mr. Harris: Your Honor is agreeable to adjourn early enough to catch the five o'clock train tonight?

The Master: Whatever is agreeable to you.

Mr. Thiess: That is agreeable to us.

The Master: All right.

GEORGE EDWARD SIMONDS, recalled.

Direct Examination by Mr. von Holst (Continued):

Q. Mr. Simonds, referring to your sheet CC for the period ending June 30, 1936—— A. Yes, sir.

Q. —will you tell me whether the two items corresponding to voucher numbers 1007 and 2430, showing payments—— A. Is that 1007 there?

Q. 1007, yes. A. It should be 1009.

Mr. Thiess: That makes me feel that what we should have is photostatic copies—— 1820

Mr. Harris: That is right.

Mr. Thiess: —of those papers.

The Witness: I think so.

Mr. Harris: I agree to that.

Mr. von Holst: Of these sheets.

Mr. Harris: I was going to put them in evidence myself, unless you do.

Mr. Thiess: We would like to have those.

Mr. Harris: Oh, yes, I think you are entitled to that.

By Mr. von Holst: 1821

Q. Well, now, I want to know whether the items appearing opposite voucher numbers 1009 and 2430, payments of five thousand to Morris and one thousand to Haight,—— A. Yes.

Q. —appear on your PL23—is that right?—for that period. A. Yes, yes,—no, sir.

By Mr. Harris:

Q. When you said "yes", you meant this was PL23? A. Well, yes, PL23.

Q. And the "no" means that those names do not appear? A. Yes, sir.

By Mr. von Holst:

Q. Or that those items do not appear.

By Mr. Harris:

Q. That those items do not appear? A. Those items do not appear.

By Mr. von Holst:

1823 Q. Now, on your PL23 for that period do any items appear for services in the Root case? A. Well, the only notation made is for one attorney in the Root accounting, I have got it marked Root accounting, but I don't always indicate—I don't indicate in here the case. Some of these bills cover many different items and we haven't space to write them down. The lawyers that render bills monthly may have services on those cases and be listed here, but I don't know from looking at the papers whether they are in the Root case.

Q. So your PL23 does not break down the items or identify the items appearing thereon with the respective litigations? A. No.

1824 Q. Now, on this CC for the period ending 6-30-36 there is no notation, is there as to whether or not bills were rendered for the charges appearing on this sheet? A. No.

Q. Now, referring to the next CC paper—which is for the period ending 12-31-36? A. Yes.

Q. —it does appear thereon, does it not, that no invoice was received from the attorney as to items marked with an asterisk? A. Yes, sir.

Q. Now, why is that, that you indicate, made that indication on the CC sheet dated 12-31-36 and did not make such an indication on the CC sheet dated 6-30-36? A. I have—there is no particular reason for that, that I can explain.

By Mr. Harris:

Q. You mean there is no significance to it? A. Well, there is—I don't know why I didn't put it on there, it wasn't so important in my mind, so I didn't make a notation of it.

By Mr. von Holst:

Q. On CC dated 6-30-1936 did you look for invoices for those three items appearing on that page? A. I am sorry, I can't tell you that, now, it is too far back.

Q. Now, on PL23 attorneys' names are listed, are they not? A. Yes, sir. 1826

Q. And the amounts appear opposite their names, do they? A. Yes, sir.

Q. Now, what are those amounts. Are they invoices, or what? A. The total amount of the invoice.

By Mr. Harris:

Q. Total amount of the invoice? A. Well, the total amount of the invoice received from the attorneys and the distribution to the accounts.

Q. You mean the total amount of the payment and the distribution? A. Yes, sir.

1827

By Mr. von Holst:

Q. And do I understand that on that sheet, PL23, there are some of these payments that are identified by suit, and others that are not? A. Yes, sir.

Q. Why is that, that some are so identified and others are not? A. Well, I think the explanation of that is that the regular attorneys, that we are familiar with, we just mark—I would mark it attorney, and the period covered, I would indicate the period covered; in the attorney who I am not familiar with I will usually indicate to what it is applied, if there is enough room.

1828 *George Edward Simonds—For Amici Curiae—Direct*

Q. Now, that is the situation as it was when you made up this CC sheet dated 6-30-1936, is that right? A. Yes, sir.

Q. And at that time what attorneys were you familiar with? A. Well, I can't answer that for that time, because it is many years ago and I have seen these names, I don't know whether I was familiar with them then or now. Now it is six years, I have become more familiar with certain attorneys than others. Some of them are well-known to everyone, and some of them are not.

Q. Do charges for Judge Morris and Judge Haight appear on PL23? A. I see no entries there, but this is not a complete
1829 record at all. You must understand that this is just the larger bills. They may be buried in sundry items not vouchered.

Q. But so far as that sheet shows those names do not appear, is that right, PL23? A. They do not appear, no.

Q. And whose name appears in connection with the Root accounting there? A. Lawrence C. Kingsland.

Q. Now, will you turn to the CC sheet dated 12-31-36? A. Yes, sir.

Q. Now, for that period, ending on December 31, 1936, do you have a schedule corresponding to PL23 for the preceding period? A. Yes, sir. That happens to be PL23, at this same period.

1830 Q. And that is dated what? A. Six months ending December 31, '36.

Q. Now, on that PL sheet does the item for $5,000.00 paid to Morgan S. Kaufman on voucher 7203 appear? A. No, sir.

Q. Does the next item, for $10,000.00, to Morgan Kaufman on voucher 12005 appear? A. No, sir.

Q. Does the next item, on voucher 12387, Thomas G. Haight, $6,820.05 appear? A. No, sir.

Q. And does the final item, on voucher 12547, to Hughes, Schurman and Dwight, for $5,011.30, appear? A. No, sir.

1831

Q. Now, I want to ask you, referring to CC sheet dated 12-31-36, whether your records that you have before you show the allocation of 7203 voucher payment to Morgan S. Kaufman for $5,000.00 to any account. A. Yes, to account 42-F.

Q. And no further—— A. No, there is no indication.

Q. Of any other account being charged? A. No, sir.

Q. And nothing to indicate in your sheets in what case those charges were paid? A. No, sir.

Q. And does the same hold true for the $10,000.00 payment to Kaufman, voucher 12005? A. Yes, sir.

1832

Q. Now, on those two items, according to the asterisk, you ascertained that no invoice had been received from the attorney, is that right? A. Yes, sir.

Q. From whom did you make that inquiry? A. I do not know if I even made an inquiry.

Q. Well, how would you know that no invoices had been rendered? A. Well, I don't—there are several ways, I could either ask someone, or I could look up the files, I sometimes look up the files to see on those matters myself.

Q. What files? A. Correspondence files.

Q. Did you ever see a correspondence file of the Universal Oil Products Company with Morgan S. Kaufman? A. No, I never have.

1833

Q. Are you sure? A. I am positive.

Q. Did you ever see a file entitled Universal Oil Products Company versus Crew-Levick? A. No, sir, I never have seen one.

Q. Well, then, you would say as to these two items that you did not consult a correspondence file? A. Well, I have no recollection of what I did at that time.

Mr. Harris: Will you pardon me a moment, Mr. von Holst? I suppose you realize that Mr. Simonds did his work in Chicago, and so his answers would be limited to the Chicago office.

1834 *George Edward Simonds—For Amici Curiae—Direct*

By Mr. Harris:

Q. Is that right, Mr. Simonds? A. Yes, sir.

By Mr. von Holst:

Q. Do you recall at this time why it was that you found it necessary to indicate on this sheet that no invoices had been received from the attorney? A. Well, an invoice is a better proof of a service rendered than a check requisition.

By Mr. Harris:

1835 Q. You mean from the accountant's,—— A. From the accountant's——

Q. —an auditing accountant's standpoint? A. Yes, sir.

By Mr. von Holst:

Q. On this CC sheet dated 12-31-36 my copy here shows in red pencil, to PL22, and an asterisk. Will you explain that? You see what I am referring to? A. Yes, sir, I have the schedule here. That is an analysis of patent litigation, general legal and new patent expense on which we would take the totals, and as shown by our PL23, the attorneys' and experts' fees and expenses, and add to that the provision
1836 from the reserve for legal bills, the disbursements from other reserve accounts—provisions made to other reserve accounts and the departmental expenses, which represent the employees in the Legal Department, to come down to the total amount that has been charged to profit and loss on the accounts.

Q. That PL means profit and loss? A. Yes, that is our method of indexing.

Q. Do I understand, Mr. Simonds, that the profit and loss account is a combination of the reserve account for legal bills and the patent infringement expense account? A. I don't—will you repeat that question, please?

Mr. Harris: I don't understand it, either.

(The question was repeated by the reporter as follows:

"Q. Do I understand, Mr. Simonds, that the profit and loss account is a combination of the reserve account for legal bills and the patent infringement expense account?")

By Mr. von Holst:

Q. Or, let me put it this way, does it include both the reserve for legal bills and amounts paid to attorneys in infringement suits that are not in the reserve account? A. Yes, sir. 1838

Q. Have you that profit and loss account here for that period ending 12-31-36? A. Yes, I have everything here.

Q. And do those two payments to Kaufman, of five thousand and ten thousand dollars, respectively, appear on that profit and loss account? A. No, sir, they are charged against the reserve for legal bills.

By the Master:

Q. When money is credited to reserve for legal bills it then comes out of profit and loss, does it not? A. Yes, sir. 1839

The Witness: May I inject a question? If these schedules are to be photostated you must remember that the red figures will show black, and, now, on this one schedule I have two stars, a blue and a red, and on the photostat they will both be black, so you can't tell from the photostat where this applies to.

Mr. Harris: We can fix that up.

Mr. Thiess: We will fix that up by hand.

The Witness: But I wanted to mention that, because that is very important.

Mr. Harris: Certainly.

1840 *George Edward Simonds—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Now, during the years 1935 and 1936, at the end of each of those years did you receive from Universal liability certificate? A. Yes, sir.

Q. And what was the purpose of that certificate? A. Well, that is a—the purpose of a certificate to an accountant, I think this is something that the lawyers can explain, where—it is the accountant's, one of the accountant's protectjons.

1841 *By Mr. Harris:*

Q. That is all, to protect the accountant, isn't it? A. Yes.

By Mr. von Holst:

Q. And what does this liability certificate show or contain? A. I will have to find it.

Q. And let me ask, first, whether there was a liability certificate for each six months' period? A. Yes.

Q. There was? A. Yes, sir.

Q. Well, let's take the first liability certificate, December 31, 1935—or, let's go first, if you will pardon me, to the end of 1934, have you got that here? A. Oh, no, I just have
1842 the December 31, 1935.

Q. So you have nothing with you that would show the liability certificate—— A. No.

Q. —at the end of 1934? A. But I will show you that the general wording is the same.

Q. All right. Now, you are referring to the liability certificate for what period? A. Well, any of these periods, I think that generally it was the same, with changes relative to Federal income tax status, and things like that, or specific items that may have come up during the period.

Mr. Harris: Do you want him to read one of those, Mr. von Holst?

Mr. von Holst: Yes.

The Witness: This is a certificate dated April 10, 1936. It is a letter addressed to—on Universal stationery—addressed to Price Waterhouse and Company:

Messrs. Price, Waterhouse and Company
33 North LaSalle Street
Chicago, Illinois.

Dear Sirs:

In connection with your examination of the 1844
financial statements of this company as at December 31, 1935 and with reference to your inquiries regarding the liabilities, we now confirm to the best of our knowledge and belief the information and explanations furnished to you, as follows:

1. All known liabilities of this company as at the above mentioned date with respect to purchases, salaries, special compensation, taxes, legal fees, accrued expenses or of any other nature were recorded as such on the books as of that date.

Now, do you want the one about Federal income 1845
taxes?

Mr. von Holst: No.

The Witness: And then that is a paragraph on Federal income taxes, there. Then paragraph 3:

3. As at the above mentioned date this company did not have any contingent liabilities except in respect to the following——

I don't know whether that——

Mr. Harris: You better not read those out.

1846 *George Edward Simonds—For Amici Curiae—Direct*

By Mr. Harris:

Q. None of them relate to this case, do they? A. Let's see, now.

Q. I mean, to the fees paid in the Root——, A. Well, in the last paragraph we have this general statement:

> All of the financial transactions of the company during the year were in the ordinary and normal course of business and there were no substantial expense or revenue items of any special or non-recurring
1847 nature or relating to transactions of prior years other than those specifically disclosed in the statement of profit and loss.

By Mr. von Holst:

Q. Well, is there any reference in those contingent liabilities to the Root case or to Morgan S. Kaufman,——A. No, sir.

Q. —in those contingent liabilities? A. Well, contingent —I think I can read it.

> As at the above mentioned date this company did not have any contingent liabilities except in respect
1848 to the following: Pending suits against us for damage claims for alleged infringement of patents, in respect to guarantees to licensees against other possible claims due to their use of our patents, and for possible additional Federal income and foreign taxes, in respect to the possible claims by licensees and others—and here is, in respect to a guarantee for a bond deposited by foreign correspondent of the Guaranty Trust Company of New York for the account of our company in connection with suit filed by us—. I am not inserting the name here. It is a German case.

Q. Now, that is for what period? A. Well, this covers the balance sheet at December 31, 1935 and the statement of profit and loss for the year ending that date.

Q. Now, have you the same thing for 1936, the end of 1936? A. Yes, sir, and it is generally the same all the way through.

Q. And the Root case does not appear on that? A. No.

Q. Nor the name of Morgan S. Kaufman? A. No.

Q. May I see SS—— A. That is CC.

Q. CC, for the period ending June 30, 1936? A. Yes, sir.

1850

(The witness produced the document.)

By Mr. von Holst:

Q. Is this entire sheet in your handwriting? A. Yes, sir.

Q. And the numbers also, is that right? A. Yes, sir.

Q. Are these your initials—— A. Yes, sir.

Q. —at the lower lefthand corner?

Mr. von Holst: That is all the direct, Mr. Master.

Mr. Harris: May I see the document you just have been interrogating about?

By the Master: 1851

Q. Just one question, was the reserve for legal services carried as a liability—— A. Yes, sir.

Q. —on the balance sheet?

Cross Examination by Mr. Harris:

Q. Now, Mr. Simonds, I direct your attention to a document which you have been examined about and which has been referred to by Mr. von Holst as sheet CC, 6-30-36. A. Yes, sir.

Q. I show you that and——

1852 *George Edward Simonds—For Amici Curiae—Cross*

Mr. Harris: No, first, I ask to have this marked for identification as Universal Exhibit number whatever it is for identification.

(Sheet CC, dated 6-30-36, produced by Mr. Simonds, was marked Universal Exhibit No. 6 for Ident., E. G. R.)

By Mr. Harris:

Q. Universal Exhibit 6 for identification was prepared by you and is your own handwriting as part of the semi-
1853 annual audit of the Universal Oil Products Company, between August 17, 1936 and September 30, 1936, is that correct? A. Yes, sir.

Q. You don't know any more closely on what date that particular exhibit was prepared? A. No, sir.

Q. And the information therein contained was obtained by you during that period? A. Yes, sir.

Q. Has it been changed, added to, altered or subtracted from in any respect—— A. Yes.

Q. —since you prepared it at that time? A. Only in so far as this Universal—it is altered now.

Mr. Harris: Will you strike his answer out?

1854

By Mr. Harris:

Q. You haven't altered it? A. No.

Q. I asked you—— A. If it had been altered; pardon me, sir.

Mr. Harris: Well, add to my question this, Mr. Stenographer——

By Mr. Harris:

Q. Other than by the addition in the last few minutes of the legend, "Universal Exhibit No. 6 for Ident., E. G. R."; what is your answer to that? A. No, it has not.

Q. Now, I show you Amici Exhibits 11, 12 and 13 and ask you whether or not, looking at those, you now recall that you examined them or any of them in connection with the preparation of Universal Exhibit 6 for identification. A. Yes, I do.

Q. Your recollection is now refreshed by looking at them? A. Yes, sir.

Q. You said this morning that you had no independent recollection but you presumed that you looked at them. A. Yes.

Q. When you said that you presumed that you looked at them, did you refer to some usual practice on your part in 1856
checking such items as these? A. Yes, sir.

Q. And now having seen them, you recall, your recollection is refreshed that you did examine them at the time? A. Yes, sir.

Q. And the information contained on Universal Exhibit 6 for identification with respect to the payment to Morgan S. Kaufman of $10,000.00, and the purpose for which that payment was made were derived from the information contained on Amici Exhibits 11, 12 and 13? A. Yes, sir.

Q. I observe that on Amici Exhibit 11 there appears after the word "approved", as appears on that exhibit, the first time, the name of Mr. A. W. Lindahl, and to the right the 1857
initials which I believe have been identified as those of Mr. B. E. Lenske? A. B. G. Lenske.

Q. B. G. Lenske, and on the second line, but overlapping the first line, the initials M. C., which you say are those of Mr. Macauley Carter? A. Yes, sir.

Q. Now, on Universal Exhibit 6 for Identification you state that this bill of Morgan Kaufman was approved by M. C., which you say is Macauley Carter? A. Yes, sir.

Q. Will you explain to the Court why you stated that it was approved by M. C. rather than by Mr. Lindahl or Mr. Lenske, whose names also appear thereon? A. Mr. Carter is the—to the best of my knowledge I think he is assistant

treasurer, and he may be assistant secretary, and he is one of the high officials of Universal.

Q. Is he an assistant office manager, or office manager, in Chicago? A. Well, he is a little more than that, I would say much more than that.

Q. Well, do you know whether or not Mr. Lindahl or Mr. Lenske have the authority to make final approvals of this sort, or whether you look to Mr. Carter for that? A. I look to Mr. Carter or someone outside of the accounting department for approval.

Q. Mr. Lenske and Mr. Lindahl were both in the account-
1859 ing Department? A. Yes, sir.

Q. And you looked for approval from someone in the general management, is that right? A. Yes, sir.

Mr. Harris: I now offer Universal Exhibit number 6 for identification, as Universal Exhibit number 6.

Mr. Thiess: You are going to put a photostatic copy in, are you?

Mr. Harris: Oh, yes, and with permission of the Court I will insert in the record and furnish to counsel on the other side photostatic copies, and we will mark on the print, we will indicate the red marks with a
1860 pen.

Mr. Thiess: And the blue marks.

Mr. Harris: And the blue marks with blue pencil or pen.

(Sheet CC, dated 6-30-36, produced by Mr. Simonds, previously marked for identification, was marked Universal Exhibit 6.)

By Mr. Harris:

Q. Now, one other question—I think you have answered this a number of times, Mr. Simonds, but I just want it to

be crystal clear that credits to the reserve for legal expenses are in the nature of appropriations from profit and loss which are credited to that particular account, whether they are actually expended or not, isn't that true? A. Yes, sir.

Q. It is just like opening a bank account by a transfer of funds from cash or from some other account to this account, and then you draw against it as charges are made,—— A. Yes, sir.

Q. —is that right? And, naturally, when you open this account or make an appropriation you have to charge it somewhere against profit and loss? A. Yes, sir.

Q. And that, as indicated, is charged to PL22? A. Yes, 1862
sir, on—I don't know, is it on this schedule?

Q. No, it is on the schedule for the period ending December 31, 1936. A. Yes, sir.

Q. Now, I notice on the document to which Mr. von Holst has referred as CC, 12-31-36, the following:

> The above reserves have been provided out of earnings to cover legal services in connection with various litigation of the company. Charges to the reserve only made when authorized by New York.

And is that your understanding of the use of the account, Reserve for Legal Expenses? A. Yes, sir. 1863

Q. That unless authorization was made by New York, payments would be charged against the ordinary profit and loss account? A. Yes, sir.

Mr. Harris: That is all.

Redirect Examination by Mr. von Holst:

Q. You say this 42-H is a reserve to cover various legal expenses? A. Yes, sir, as we explained in our report, it was set up primarily for the Winkler-Koch and the other larger cases, where the litigation extends over a number of years.

Q. Yes, but it is a fact, is it not, that there were many charges incurred in the Winkler-Koch litigation, as you call it, which were not charged to 42-H at all? A. Yes, that is right.

Q. And as I understand it, you are unable to tell us why there were these two accounts for legal fees? A. Well, wait a minute, now,——

Mr. McCullough: He didn't say that.

The Witness: I didn't say that.

1865 *By Mr. von Holst:*

Q. Well, can you tell us why this account 42-H was set up? A. To make provision for the bills that would be rendered in these suits.

Q. But a great many bills were rendered in these suits that were not charged to 42-H at all, isn't that true? A. That is right, but some of the bills weren't rendered for years after the services were performed.

Q. Well, is it your position that 42-H was to take care of bills the services for which had been accruing over a period of considerable time? A. No, my understanding is that the reserve was to be used for those bills which New
1866 York decided to put in the account. There is no rhyme or reasoning as to the things they put in.

Q. And I want to ask you this, I showed you, did I not, in my direct examination, photostats of Amici Exhibits 11, 12 and 13? A. Yes, sir.

Q. And I understood you to say at the time when I asked you that your statement that you put the Crew-Levick case on your sheet CC, Universal Exhibit 6, was an assumption on your part, that you must have got that information from the voucher requisition, Amici Exhibit 11.

Mr. Harris: No, just a minute,——

By Mr. von Holst:

Q. Didn't you so testify?

Mr. Harris: —that is not what he said.

Mr. von Holst: I am entitled to probe him.

Mr. Harris: That is not what he said. It was before you showed him the documents that he said that.

Mr. von Holst: No, sir.

Mr. Harris: Well, I submit the record will show it.

Mr. von Holst: The record will show it, and I am 1868
entitled to probe him further.

Mr. Harris: Read what the record shows.

The Master: Do you want to have the questions and answers read?

Mr. Harris: I certainly would like to. I am positive that was before he showed him these documents.

Mr. von Holst: Mr. Reporter, can you find that part of this morning's testimony where the witness was shown Amici Exhibits 11, 12 and 13?

(The earlier proceedings were repeated by the reporter, as follows:)

1869

"Mr. von Holst: If the Master please, I should like to have the photostats that are in evidence of the voucher and voucher requisition, that is, Amici Exhibit 10, 11, 12 and 13. Have we those here?

"The Master: You mean the——

"Mr. von Holst: Those exhibits, they are photostats of the original——

"The Master: Well, aren't they simply attached to the record?

. . . . . .

"Mr. Harris: What are you showing him, first?

"Mr. von Holst: I am showing him all three of them together.

"Mr. Harris: Exhibits what?

"Mr. von Holst: Exhibit 10,——

"Mr. Harris: 10 is a part of the voucher, is it?

"Mr. von Holst: Well, I will explain that.

"Mr. Harris: 11, 12 and 13, I think.

"Mr. von Holst: That is right, I am showing him 11, 12 and 13.

"Mr. Harris: That is right.

1871

"By Mr. von Holst:

"Q. Now, I show you photostats of certain documents that have been marked in this case as Amici Exhibit 11, Amici Exhibit 12 and Amici Exhibit 13.

"Mr. Harris: Might show him 14, too, if you don't mind, because that is signed by Mr. Carter.

"By Mr. von Holst:

"Q. I also show you 14. A. I didn't see the check.

"Q. You didn't see the check?

1872

"Mr. Harris: I thought he said earlier that he verified all these payments by looking at the check.

"The Witness: No, that was in the other.

"Mr. Harris: Oh, not this one. I see, all right.

"By Mr. von Holst:

"Q. So referring merely to Amici Exhibits 11, 12 and 13,—— A. Yes.

"Q. —now, does Amici Exhibit 11 look like the requisition vouchers that you examined in the Universal office—— A. Yes, sir.

"Q. —all during these years? It is their regular form, isn't it? A. Yes, sir.

"Q. And it is a fact, isn't it, that Amici Exhibit 12 is one side of a sheet of paper, of which Amici Exhibit 13 is the reverse side? A. Yes, sir.

"Q. Is that correct? And Amici Exhibit 11 is the voucher requisition, is it not? A. Yes, sir.

"Q. And Amici Exhibit 12 and 13 is the voucher, that is to say, the front and back side of the voucher? A. Yes.

"Q. And Amici Exhibit 12 containing a carbon copy of the remittance slip that goes to the customer? 1874
A. I understand that that is the procedure.

"Q. And posting data below; and Amici Exhibit 13 being the distribution record? A. Yes.

"Q. Is that right? A. Yes, sir.

"Q. Now, will you refer to those three exhibits and see where, if anywhere, any approval by Macauley Carter appears thereon? A. Here (indicating).

"*By Mr. Harris*:

"Q. On Exhibit what? A. On Exhibit 11.

"*By Mr. von Holst*:

1875

"Q. Where is that? A. This big scrawl through there (indicating).

"Q. Well, are you familiar with his initials? A. Yes, sir.

"Q. You mean the scrawl appearing on the second line? A. Well, it appears all over the thing. I think if you had the original here you could see how this thing follows through.

"Q. Yes, unfortunately we haven't the original at this time. Now, it doesn't appear, does it, on either of the other documents, that is, the initials of Macau-

1876 *George Edward Simonds—For Amici Curiae—Redirect*

ley Carter do not appear on Amici Exhibit 12, do they? A. No, sir.

"Q. Nor on Amici Exhibit 13? A. No, sir.

"Q. Now, for this period shown by CC dated June 30, 1936, I believe you stated that there is an analysis of attorneys' fees corresponding to PL39 in the previous period, is that right?"

Mr. Harris: It is prior to the time you showed him these documents, Mr. von Holst.

Mr. von Holst: Well, maybe I can avoid reading
1877 the whole thing by just asking you this, Mr. Simonds,——

The Master: I think so.

By Mr. von Holst:

Q. I want to know whether you now recollect that the legend Universal versus Crew-Levick, appearing upon Universal Exhibit 6——

Mr. Harris: No, it doesn't appear on Universal Exhibit 6.

1878 *By Mr. von Holst:*

Q. I mean appearing on Amici Exhibit 11, whether you recollect from independent recollection, refreshed if you like, but whether you have a knowledge yourself of the fact that that legend appeared upon Amici Exhibit 11 at the time you looked at it.

Mr. Harris: Well, here it is.

(Amici Exhibit 11 was shown to the witness.)

A. Yes, sir.

By Mr. von Holst:

Q. You remember that particular transaction? A. Well, I am a little confused on these answers between—can you help me, Your Honor?

The Master: What he wants to know is whether you have an independent recollection that the notation on there as to the purpose or the case for which the services were performed was on that voucher when you looked at it.

The Witness: Yes, well, when I look at my working papers, and knowing how I analyze the accounts, 1880
I know it must have appeared on the voucher when I inspected it, because I say 1936 retainer re Crew-Levick suit, and the approval of Macauley Carter, and Mr. Carter's initials appear on this thing, and that is the only mention of Crew-Levick on the requisition.

By Mr. Harris:

Q. Well, you have no independent recollection but you have a refreshed recollection, from having looked at Exhibit 11? A. I have a refreshed——

The Master: Well, I think the witness's statement is perfectly clear. He says that having made the notation that he did, and having seen the voucher, he 1881
concludes that it must have been there.

By the Master:

Q. Isn't that about it? A. Yes, sir.

Q. Otherwise you wouldn't have found the information, or would not have had the information to put on your memorandum? A. Yes, sir.

By Mr. von Holst:

Q. I would like to ask you this, you did have offices in Chicago, of course, when you prepared these working papers, did you not? A. Yes, sir.

1882 *George Edward Simonds—For Amici Curiae—Redirect*

Q. And those were prepared right in Chicago? A. These were prepared in the offices of Universal Oil Company.

Q. Oh, I see, right in their offices? A. Yes, sir, all of them.

Q. So if you had wanted any information at the time you could have asked either Mr. Carter or Mr. Lindahl or Mr. Lenske, or anybody else, is that right? A. Yes, sir.

Mr. von Holst: That is all.

By Mr. Harris:

1883 Q. Well, would you, was it your practice to ask people that sort of thing rather than looking for the documents themselves? A. We always look at the documents first.

Mr. Harris: That is all.

By the Master:

Q. You can't fix the date when you looked at that voucher? A. No, sir.

Mr. Harris: He fixed the period.

The Master: I know, but not the exact date.

Mr. Harris: Within that period.

1884 The Master: Is that all?

Mr. von Holst: Yes, that is all the redirect.

By Mr. Harris:

Q. Mr. Simonds, have these working papers ever been out of the possession of Price Waterhouse and Company since they were prepared? A. No, sir.

Mr. Harris: Your Honor, I would like at this time to——

The Master: Are you through with this witness?

Mr. Harris: Well, I don't know that I will need him in connection with this, but I might keep him on the stand—to have marked the bill of complaint in Universal Oil Products Company against Crew-Levick Company, in the District Court of the United States for the Eastern District of Pennsylvania, wherein it appears that Morgan S. Kaufman was solicitor of record for the plaintiff, that Thomas G. Haight, William F. Hall, Charles M. Thomas and Morgan S. Kaufman were of counsel for the plaintiff, in view of the fact that compensation of Mr. Kaufman for services in the Crew-Levick case has become a part of 1886
this proceeding, and so I would like to have that marked Universal Exhibit 7.

(Bill of Complaint in Universal Oil Products Co., Plaintiff, versus Crew-Levick Company, Defendant, in the District Court of the United States for the Eastern District of Pennsylvania, In Equity, December Term 1935, No. 9287, was marked Universal Exhibit 7.)

Mr. Harris: I would also like to ask Mr. von Holst and Mr. Thiess if they will concede that there were three Root cases, two in the United States District Court for the District of Delaware, which were 1887
consolidated, and one which was brought in or about the year 1932, in the Superior Court of the State of Delaware, which was dismissed some months later.

Mr. von Holst: I have no knowledge myself of that suit in the Superior Court of Delaware. Mr. Thiess has——

Mr. Thiess: Just a minute, I think I have that recollection. We weren't in that suit in the Superior Court of Delaware.

1888

Mr. Harris: We didn't say that you were.

(Discussion off the record.)

Mr. Thiess: I think I remember that case.

Mr. Harris: The only reason I make a point of it was because Lenske, or someone, spoke of another Root case, and there was some question by Mr. von Holst about it.

Mr. Neuman: It wasn't a patent infringement suit.

Mr. Harris: I didn't say it was, I said it was a case involving the Root Refining Company and Universal

1889 Oil Products Company.

(Discussion off the record.)

Mr. Thiess: We would like to have photostatic copies of those other two sheets.

Mr. Harris: We will if you offer them in evidence. You may have them.

Mr. Thiess: We would like to have copies and would like to offer them in evidence as——

Mr. von Holst: ——Amici Exhibit——well, let me make the offer in evidence.

Mr. Thiess: You make the offer.

1890

Mr. von Holst: We offer as Amici Exhibit 59 the sheet designated as CC, and dated 12-31-35, and we offer in evidence as Amici Exhibit 60 the sheet designated as CC and dated 12-31-36.

The Master: They may be received in evidence as photostatic copies to be attached but not copied in the record.

(Sheet designated CC, dated 12-31-35, produced by Mr. Simonds, from the records of Price Waterhouse and Company, was marked Amici Exhibit 59.)

(Sheet designated CC, dated 12-31-36, produced by Mr. Simonds, from the records of Price Waterhouse and Company, was marked Amici Exhibit 60.)

Mr. Harris: I am producing at the request of the Master and of counsel on the other side of the table a tabulation of fees charged in connection with the Root case and also the Crew-Levick cases, and I show Mr. Simonds a document and ask that it be marked as Universal Exhibit 8 for identification.

The Master: Does he know that that is correct? 1892
Mr. Harris: Well, I am going to ask him.

(A tabulation of fees in the Root case and Crew-Levick case was marked Universal Exhibit No. 8 for Identification, E.G. later introduced as Amici, Exhibit 61.)

Recross Examination by Mr. Harris:

Q. Mr. Simonds, I show you a schedule which has been marked Universal Exhibit 8 for identification and ask you if you have compared the figures on that schedule with the books of Universal Oil Products Company and the vouchers for payment of the several sums therein mentioned. A. Yes, sir. 1893

Q. And are they correct, in accordance with such books and vouchers? A. Yes, sir.

Mr. Harris: All right.

Mr. Thiess: May we see a copy of that?

Mr. Harris: We are giving you a copy now.

Mr. Thiess: We want to see whether we want to ask any questions.

Mr. Harris: All right, that is all I am asking.

Mr. Thiess: I say, we want to see it so we can see whether we want to ask any.

(Discussion off the record.)

1894 *Colloquy*

Mr. Harris: Now, let me say, Mr. Thiess and Mr. von Holst, and the Master, that on the seventh and last page of this exhibit, the seventh or last page of this exhibit, a mistake was discovered and corrected by Mr. Simonds, which has been corrected by a typewriter on a copy which you have, but which was corrected by Mr. Simonds in ink on the copy which is marked. That correction consists of the date of the payment to Hugh M. Morris. As indicated originally, it was 3-4-42. It has been corrected to 3-5-42. And the next payment, to Morgan S. Kaufman, of
1895 $10,000.00, was originally shown on this schedule as 3-18-42, which obviously should be 3-18-36.

These two corrections have been made in typewriter on your copy, but in the copy marked for identification are indicated in ink.

Now, I believe you asked me why fifteen thousand of the fifty thousand dollars paid to Morgan S. Kaufman is not shown on these schedules, or you were about to ask that.

Mr. Thiess: I was about to ask that.

Mr. Harris: The reason for that is, as shown by the vouchers, distribution sheets and the testimony,
1896 those charges were not made on the books of the company either against the Root case or against the Crew-Levick cases, and accordingly, so far as the accountants are concerned, would not be included in a schedule showing the fees in those cases.

The exhibits which have been offered in evidence show, for instance, the five thousand payment on the 27th of July, 1936, to be rendered in connection with general legal services, and the ten thousand dollars, as shown by Amici Exhibit 26, is said to have been in full for services for the year 1936 and for retainer for 1937. Since they were not allocated upon the

books of Universal either to the Root or to the Crew-Levick case, the accountants did not put them in the schedule of the fees in those cases, and that is the reason why they are omitted from the schedule. We do not mean to deny the payments were made.

Mr. von Holst: May I ask, Mr. Harris,——

Mr. Harris: Of course, all of these were charged to 42-H, or 42-F, as I understand it.

Mr. von Holst: Yes, but what I wanted to inquire is, is it also true that no fees charged to 42-H or 42-F appear on this document?

Mr. Harris: Oh, everything on 42-H and 42-F 1898
relating to the Root or Crew-Levick cases is on this schedule.

Mr. von Holst: Yes, so it is only where——

Mr. Harris: Which has been identified.

Mr. von Holst: But it is only where there is no allocation to any particular suit on the books of the company——

Mr. Harris: That is right.

Mr. von Holst: —that it does not appear on this schedule.

Mr. O'Mara: Only where there is no allocation to either of these two suits that it does not appear on 1899
the schedule.

(Discussion off the record.)

The Master: Does it appear anywhere on the books for what the other fifteen thousand dollars paid to Kaufman was?

Mr. Harris: General legal and retainer.

Mr. Neuman: The testimony is the second ten thousand dollars was for the Crew-Levick case.

Mr. Harris: I can't help what the testimony shows, Mr. Neuman. We are giving you a transcript of the

books of the company, and the bookkeepers can't read Mr. Halle's mind. He knows what he intended it for.

The Master: Well, do you wish to examine on this?

Mr. Thiess: I just want to look this through for a moment and see whether there is anything here.

Mr. Harris: Perhaps one more explanation should be made, gentlemen, on the record, and that is on the fourth page, there are two charges—on the fifth page —two charges, two payments, I should say, made to Judge Haight, one of five thousand dollars on December 16, 1941, and one of seventy-five hundred, made to him on February 26, 1942, and while those are charged as part of the Root case I understand those services were rendered in connection with this so-called Amici investigation and not in connection with the trial or argument on appeal of Universal against Root.

1901

Mr. Thiess: Well, then, as I read this down here, as I understand it, you say the last two charges are in connection with the Amici investigations, while you have also got a note, "Also Crew Levick Case".

Mr. Harris: That is right, that was a clean-up fee, at the end.

1902

(Discussion off the record.)

Mr. Harris: I don't want other people speaking, on my side, please. Whisper to me, and I will keep the record straight.

Now, I am informed that the seventy-five hundred dollars, as shown on page 5, was allocated to this proceeding, but that that was not the entire bill, and that the bill included also services in the Crew-Levick case. Is that right?

(Discussion off the record.)

Mr. Harris: That is right, my explanation is correct.

(Discussion off the record.)

Mr. Thiess: In other words, as I understand this now, this voucher 2295 was for $10,500.00.

Mr. Harris: It was more than that, it included other matters, it was everything——

Mr. O'Mara: Maybe I can make a statement on the record, because I conducted the transaction.

Mr. Thiess: May I finish this? At least, this voucher, of the amount in this voucher 2295, $7,500.00 1904
was charged by Judge Haight to this investigation.

Mr. Harris: Judge Haight unfortunately was in no position to make a charge, he was dead.

Mr. Thiess: But it was charged for Judge Haight's services.

Mr. Harris: If you will permit me to make a statement, I can clarify it. Senator O'Mara, as one of Judge Haight's partners, made a settlement with Universal Oil Products Company in February of 1942 for all outstanding claims of Judge Haight or his law firm against Universal Oil Products Company up to the date of Judge Haight's death.

Mr. O'Mara: That is right. 1905

Mr. Harris: That included services in the Crew-Levick case, services in this proceeding, this Amici proceeding in the Root case, and for other services. There was no bill, it was arranged orally, just as Mr. Kaufman's bill was arranged with Mr. Halle, and there was a voucher including within it the full payment to Judge Haight's law firm, in which there was allocated $7,500.00 to this proceeding and $3000.00 to the Crew-Levick case. You should have seen it, because we gave you the voucher this morning, and that was one of the things you were looking at.

Mr. Thiess: I think we have got it.

Mr. von Holst: I would like to ask Mr. Harris, then, isn't this legend appearing on the fifth sheet, "$7,500.00 (Also Crew Levick Case)" not in entire agreement with your statement?

Mr. Harris: Whether it is confusing or not, it was intended to convey what I have described on the record, as you will see from the voucher which we have submitted to you.

(Discussion off the record.)

Mr. Harris: I have nothing further from Mr. Simonds. You will observe we have not offered this in evidence. It can be offered if you wish to offer it, or the Master wishes to make it part of the record.

Mr. von Holst: Mr. Harris, maybe I can address the question to you instead of to the witness; this legend on page 2 says "See also Crew Levick case". It occurs three times. Now, that is merely a cross reference showing that payments were made in the Crew-Levick case on the same voucher?

Mr. Harris: Well, let's look and see. 6491 was one of those, the next one is 9525, and the next one would be 9620—yes, that is right. You see them duplicated under Crew-Levick case, the same vouchers.

Mr. von Holst: And so this legend here, "See also Crew Levick case" doesn't mean that the items against which it appears opposite were incurred in the Crew-Levick case?

Mr. Harris: No, it means they were included in the same payment, payment for both cases included in the same remittance,——

Mr. von Holst: Yes.

Mr. Harris: —as I understand it.

The Master: Well, I am not sure that I entirely understand yet the last two items on page 7, did you

say, or 5. Do I understand that a part of that amount totaling $12,500.00 consisted of fees in the Crew-Levick—in the Root case?

Mr. Harris: No, sir.

The Master: In the Root case?

Mr. Harris: All of that $12,500.00 was in the Root case, but it was in this Amici proceeding.

The Master: I see, therefore it should not be considered a part of the regular services in the Root case.

Mr. Harris: Yes, that is right.

The Master: All right.

Mr. Harris: No part of the trial and appeal—— 1910

The Master: Yes.

Mr. Harris: —in the main Root case, that is correct.

Mr. von Holst: And that legend there, Mr. Harris, that legend appearing on the same page, "Also Crew Levick case", should be, "See also Crew Levick case",——

Mr. Harris: That is right.

Mr. von Holst: —as in the preceding page, and subject to the same explanation.

Mr. Harris: That is right.

Mr. von Holst: We offer this schedule—shall I call it of fees? 1911

Mr. Harris: Marked Universal Exhibit 8 for identification.

Mr. von Holst: —marked Universal Exhibit 8 for identification, as Amici Exhibit 61.

The Master: Do you want this copied in the record?

Mr. Thiess: No, I don't think it is necessary.

The Master: Very well, just include it as an exhibit.

Mr. von Holst: We have no further questions of the witness.

1912 *William Lindahl—For Amici Curiae—Direct*

The Master: Very well, then, the witness is excused.

Mr. von Holst: We would like to call Mr. Lindahl. Will the Master swear the witness?

(A tabulation of fees in the Root case and Crew-Levick case, previously marked Universal Exhibit 8 for Identification, EGR, was marked Amici Exhibit 61.)

1913 WILLIAM LINDAHL, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. State your name, please. A. Arthur William Lindahl.

Q. And your residence. A. 7555 South Ridgeland Avenue, Chicago, Illinois.

Q. And what is your position? A. Chief accountant and cashier.

Q. Of what company? A. Universal Oil Products Company.

Q. And how long have you held that position? A.
1914 Twenty-one years, going on twenty-one years.

Q. So you had the same position in 1935 and 1936? A. Yes.

Q. Now, I show you a photostat of Amici Exhibit 4, Mr. Lindahl. Is that in your handwriting? A. Yes, sir.

Q. Now, do you recall whether the authority of J. J. Mitchell for the issuance of this voucher was oral or written? A. No, sir.

Q. You don't recall? A. I don't recall.

Q. Have you ever made a search to see if there was any written authorization? A. Yes, sir.

Q. Did you find any? A. No, sir.

Q. Do you recall speaking with Mr. Mitchell about this voucher requisition? A. I don't remember, no.

Q. Now, this voucher requisition, Amici Exhibit 4, shows that the account to be charged is 42-H, Reserve for Legal Bills. Did you make that charge on your own authority, or did you have some other authority for charging the amount to that account? A. I had other authority.

Q. Do you recall from whom you got that authority? A. No, sir.

Q. In making these voucher requisitions and charging 42-H, Reserve for Legal Bills, is it your recollection that that authority generally came from New York? A. Yes, sir. 1916

Q. From Mr. Halle? A. Yes, sir.

Q. Now, at that time you had other charges in connection with the Root case, that is, the charges for lawyers' bills were being charged to or shown in sub-ledger account 16, were they not? A. Yes, sir.

Q. Do you know why this item was not charged in sub-ledger 16, and was charged in 42-H? A. No, only on New York authority to charge it to Reserve for Legal Bills.

Q. Where was Mr. Mitchell at that time, in the Chicago or New York office? A. He was in Chicago.

Q. And his position was treasurer, was it? A. He is vice-president. 1917

Q. At that time was he vice-president? A. I think he was vice-president and treasurer, I think, then.

Q. Now, I call your attention to the fact, Mr. Lindahl, that the check number appears on this requisition. A. Yes, sir.

Q. That would normally be true, would it? A. It is true to this respect, that when I presume there is a letter going with a check I assign a check to this particular requisition, so that when the girl who writes up the check, she writes this check for this particular requisition, and that is done for the reason that when checks are going with letter,

the letters are perhaps written maybe an hour or two before we write the check, and the stenographer comes in and asks for the check number to insert in her letter.

Q. Well, Mr. Lindahl, this particular check was not sent in a letter, was it? A. I don't know, I just assumed that it was going to be, and that is the reason why it is there.

Q. I refer you for a moment to Amici Exhibit 6, which indicates that this check was given to Mr. Mitchell, does it not? A. Yes, sir.

Q. But you say that you put the check number on the voucher requisition because you assumed that a letter was
1919 going to be written? A. That is right,

Q. Is that a recollection of this transaction? A. Well, it is a recollection on every number that is on this requisition, a check number.

Q. But you don't recall this transaction in particular? A. No, I don't.

Q. Do you recall giving this check for twenty-five thousand dollars to Mr. Mitchell? A. No, I don't.

Q. I show you Amici Exhibit 8 and ask you whether you saw that receipt as of about the time of the date it bears, or shortly thereafter. A. No, sir,

Q. When did you first see that receipt? A. Well, I think
1920 maybe a day or so ago, Monday, maybe—Tuesday, I guess.

Q. You had never seen it before then? A. No, sir, never saw it.

Mr. von Holst: I understand, Master, that we haven't the originals of these Amici Exhibit 11, 12 and 13.

The Master: Not yet. I am informed they are in the mails and they should have been here this morning, but they had not arrived.

Mr. von Holst: I am just wondering whether there is much object in pursuing the examination of this witness without the originals. We examined the

witness Lenske on photostats, but these particular exhibits, at least the first of them, the voucher requisition,——

Mr. Harris: Well, we are agreeable if you feel——

Mr. von Holst: —are in Mr. Lindahl's handwriting.

Mr. Harris: —like withdrawing him and putting someone else on——

The Master: Have you any other witness here?

Mr. von Holst: Yes.

(Discussion off the record.) 1922

Mr. von Holst: Could we excuse Mr. Lindahl for the moment, and call Mr. Healy?

Mr. Harris: Before you excuse him, Mr. von Holst, you made inquiry in Chicago of Mr. Lenske with respect to the removal from the files, you recall,——

Mr. von Holst: Yes.

Mr. Harris: —of the vouchers and checks indicating the payments to Mr. Kaufman.

Mr. von Holst: Yes, sir.

Mr. Harris: And I can make a statement on the record, and I think between this witness and Mr. Healy you can verify any part of it you wish, putting the two together, so there will be continuity. 1923

I understand as follows. On November 1st, 1939, Mr. Parkhurst, an F. B. I. agent, came to the New York office of Universal and saw Mr. Healy, and inquired with respect to the checks showing payments to Mr. Kaufman. Mr. Healy asked Mr. Behrens to join the conference. As a result of that conference, Mr. Parkhurst requested that the checks be gotten from Chicago and turned over to him. Mr. Behrens said he would do so.

Later in the day Mr. Parkhurst called Mr. Behrens and said that he would like also the supporting

1924

vouchers, by which I understand was meant the voucher, requisition, distribution sheet, and transmittal. That was on Wednesday, the first of November.

On Friday, the third of November Mr. Behrens telephoned to Mr. J. J. Mitchell, at the Chicago office of Universal, and requested that they be gotten out and sent to New York.

Mr. Mitchell—and I am piecing this from several witnesses' testimony, so that you can verify it piecemeal—instructed a confidential clerk, who is not in the accounting department, but whose office is some

1925

distance away—this may account for Mr. Lenske's inability to find the information—by the name of Jessie Baxter to get those checks out and send them to Mr. Behrens, in New York, Mr. Behrens or Mr. Healy, in New York. They were sent out late on Friday evening, November 3rd, by registered mail and were received in New York and receipted for, and I believe Mr. Lindahl has the receipt, on the 6th of November, 1939.

On the 8th of November, 1939, Mr. Parkhurst called for them and received them from either Mr. Behrens or Mr. Healy, saying that he would photostat them and return them.

1926

On the next day, the ninth of November, he did come back with them, saying that he had photostated them, whereupon Mr. Healy received them and they were kept in the New York office of Universal until, I think, May 15th, 1941, when they were transmitted to Mr. Lauritano, Assistant United States Attorney, in connection with the criminal prosecutions of Judge Davis, Mr. Kaufman and Mr. Fox, and they are still in the possession of the United States Attorney, either in New York or Philadelphia.

Now, that I have pieced together from what I have heard from these several witnesses, and I tell it to

you that way so if you want to verify it you will be able to pick up the story from several of these witnesses.

The Master: Did that include the original of that receipt?

Mr. Harris: No, the receipt was never out of the New York office so far as we know. That was transmitted in 1941 to Mr. Lauritano by separate letter, as I recall it—no, in the same letter, in the same letter that included the checks and vouchers, but that was in New York, in the New York office.

1928

The Master: Well, Mr. von Holst, do you wish to examine the witnesses in connection with that matter, or are you satisfied with Mr. Harris' statement?

Mr. von Holst: We are satisfied with Mr. Harris' statement, but we would like to cross examine Mr. Lindahl further when we get these originals.

The Master: Yes.

Mr. Harris: Here are the receipts, if you wish them, on November 6th, 1939.

The Master: Do you want those as exhibits?

Mr. von Holst: Not for this purpose, no.

The Master: I was going to say, if you do I will try to get them from the District Attorney, if he has them.

1929

Mr. von Holst: Oh, you are referring to the originals?

The Master: Yes.

Mr. von Holst: Yes, we do want them.

The Master: I have found some difficulty in getting anything either from them or the F. B. I. or Mr. Gahagan.

Mr. Harris: I should add to the explanation this, in justice to Mr. Lenske, that when Mr. Lindahl, who as you recall, was on vacation when we had the hear-

1930

ing in Chicago, returned from his vacation and the matter was called to his attention, he immediately thought of Jessie Baxter as the person who would probably know, and he found from her and I have here a memorandum made on November 3, 1939, of sending these documents to New York by registered mail. Mr. Lenske had made inquiry apparently of the accounting department, rather than of this confidential clerk, who is across the building.

Mr. Thiess: But there were no memos placed in the files to that effect?

1931

Mr. Harris: They were in her files, Miss Jessie Baxter's. I will just show you the memorandum. These were gotten by Mr. Lindahl. There is her envelope. You see, it says, Jessie Baxter, personal, so it is no wonder Mr. Lenske didn't find it.

Mr. Thiess: Very pertinent note on here, "To be opened only by J. G. Alther, H. J. Halle or J. Baxter."

Mr. Harris: When I speak of Miss Baxter as being a confidential clerk out there I should explain that a little more. I didn't mean that she was so confidential that she was in things we didn't want other people to know generally, but she was a confidential pay roll

1932

clerk, and in order that there might not be too many heartaches around the office she was the recipient of information concerning things of that sort.

Mr. von Holst: You may step aside, then.

Mr. Healy: May the witness be sworn?

LEO MORGAN HEALY, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. Please state your name. A. Leo Morgan Healy.

Q. Your residence? A. Bedford Village, New York.

Q. And your position? A. I am secretary to Mr. Halle, assistant secretary and assistant treasurer of Universal.

Q. And what position did you hold in 1935? A. Same positions.

Q. And the same positions in 1936? A. Right.

Q. Mr. Healy, I refer you to Amici Exhibit 10 and to Amici Exhibit 9, to refresh your recollection on the question that I am about to ask you. Would you just read those through to yourself.

(The witness examined Amici Exhibit 9 and Amici Exhibit 10.)

By Mr. von Holst:

Q. Now, Amici Exhibit 10 has been identified by Mr. Lenske as his record of a telephone conversation with you. A. Yes.

Q. Do you recall that telephone conversation—— A. No.

Q. —with respect to a payment to be made to Mr. Kaufman in the sum of ten thousand dollars? A. No.

Q. You have no recollection at all about it? A. No, not right at this present time, I do not.

Q. You have no refreshed recollection after looking at those two documents that I have shown you? A. That I actually made that call? No, I can't say that I——

Mr. Harris: Or that you made any call about this——

Mr. von Holst: Now, Mr. Harris,——

Mr. Harris: Excuse me.

Mr. von Holst: —I am trying to be perfectly fair in the examination.

Mr. Harris: He said "made that call". I am sure that is not what he meant.

By Mr. von Holst:

Q. In other words, you don't recall the telephone conversation which is recorded in Mr. Lenske's memorandum, Amici Exhibit 10, is that right? A. No, I do not recall it.

Q. Do you recall that in March of 1936 a payment of ten thousand dollars was authorized to be paid to Mr. Morgan S. Kaufman? A. Well, I can't remember exactly the payment of ten thousand dollars in March of 1936. I don't charge my memory with those things.

Q. Well, do you remember any payments being made——

1937 A. Yes.

Q. —to Morgan S. Kaufman,—— A. Yes.

Q. —in 1936? A. I can't say it was 1936. I do recall payments being made to Mr. Kaufman.

Q. Well, do you remember when the first payment was made to Mr. Kaufman? A. No, I don't remember exactly.

Q. Well, looking at these documents that I have shown you, Amici Exhibits 9 and 10, there is reference to a ten thousand dollar payment to Mr. Kaufman, is there not? A. Yes.

Q. Do you recall any conversation with Mr. Behrens regarding this payment to Kaufman in 1936? A. Not at the present time, I do not recall any exact conversation I had

1938 about it?

Q. Oh, I am not asking you, Mr. Healy, to give the exact words, of course not, but I mean do you recall in substance what you said to Mr. Behrens,—— A. No.

Q. —or talking with Mr. Behrens? A. No, I do not recall it at this date.

Q. You just have no recollection at all about talking about this matter? A. In a general way, yes, of course, but I don't recall the specific thing at this time.

Q. Well, what do you recall about this transaction or this payment to Mr. Kaufman in March, 1936? Just what do you recall about it? A. I don't recall anything particu-

larly about it. It happened in 1936, and, as I said previously, I don't charge my memory with those things, with what happened in 1936.

Q. Well,—— A. I would be a squirrel after three or four months if I recalled everything that happened in a period of that time.

Q. Do you mean that your mind is a complete blank with regard to the transaction as evidenced by those two documents? A. No, I don't say that it is a complete blank, but specifically, I don't recall having talked to Mr. Lenske or to Behrens about it.

Q. All right. Now, then, I am asking you to please state 1940
what you do recall concerning this transaction. A. I don't recall anything particularly about this transaction.

Q. Well, if you don't recall anything particularly, what do you recall generally about it? A. Nothing generally.

Q. So you don't recall anything at all about it, is that right? That is all I am trying to find out. A. At this present time, I don't.

Q. In those years did you in your position which you then occupied authorize the charging of any special accounts when attorneys' bills were paid? A. No, I never authorized them.

Q. I don't mean authorizing the bills, I mean authorizing
the charging the—— A. Charge—— 1941

Q. —accounts. A. That is as I understood it; no.

Q. Well, who did authorize the charging of certain accounts during these years? A. Mr. Halle would.

Q. Was there anyone else besides Mr. Halle? A. No, I don't think so, at least, not from the New York office.

Q. Did you know at the time about the existence of account 42-H,—— A. No.

Q. —Reserve for Legal Bills? A. I knew the reserve for legal bills, but I didn't know anything about 42-H.

Q. Did you have any conversations with Mr. Halle concerning the charges of attorneys' fees to this Reserve for

Legal Bills? A. If I gave instructions to Chicago about any of them I would have gotten the direction from Mr. Halle in respect to a charge.

Q. Well, did Mr. Halle ever explain to you why this account, Reserve for Legal Bills, was set up? A. No, he never did.

Q. Well, do you know what the purpose of the setting up of the Reserve for Legal Bills was? A. Yes, I do, generally; in anticipation of any large items that might be coming through, so that there would be a so-called cushion for them.

1943 Q. Now, there was another account, was there not, in the years 1936 and 1935 to which legal bills were charged? A. I know generally of them, yes; they might be charged to oppositions or infringements.

Q. And what, if you know, determined whether the attorney's charge or a payment to an attorney was to be charged to infringement or to the general reserve? A. Well, I would know that if a bill came in with respect to the suit against Root, that it may be charged to infringements.

Q. Well, you know, do you not, that in the Root case—you are familiar with that case, are you? A. In a general, very general way.

Q. —that in that case certain of the bills were charged
1944 to infringement, and certain of them were charged to reserve for legal bills? A. No, I really don't know.

Q. Now, assuming that to be true, do you know why some were charged to reserve for legal bills and others to infringement? A. Well, in some of the bills, that had not been rendered over a period of years, and they would be rather a large item, the likelihood is that they would be charged against the reserve that had been set up for just such contingencies.

Q. Were you familiar in a general way with the litigation that was pending in which Universal was plaintiff in 1935 and 1936? A. In a general way, yes.

Q. What cases were pending in either of those two years? A. Well, that—I wouldn't know that, exactly. The Root case I recall.

Q. Do you recall any other case that was pending then? A. No, it wouldn't be in my sphere of activity to have them in mind, at that time.

Q. Well, the answer is "No", then, you do not recall, is that right? A. You will have to ask the question again.

Q. Well, I will ask the question again. Do you recall any other case that was pending in which Universal was plaintiff in 1935 and 1936? A. No, again, I just don't charge my memory with them. 1946

Q. I refer you to Amici Exhibit 9. Do you recognize any of the writing on that exhibit?

(The witness examined Amici Exhibit 9.)

A. Yes, I recognize my initial over here (indicating).

By Mr. von Holst:

Q. Appearing at the upper righthand corner? A. That is right. I recognize this (indicating).

Q. Now, wait a minute, this is the legend, UOP v. Crew Levick? A. Yes, that is right. 1947

Q. In whose handwriting is that? A. John Leonard's.

Q. And in what office was he? A. He was in our office at that time.

Q. In the New York office? A. That is right.

Q. Do you recall whether when you initialed Amici Exhibit 9 that legend, UOP v. Crew Levick, was on the document? A. No, I would have—I would have seen that memorandum first, in the usual activities, in the course of events in our office, I would see it before John Leonard would.

Q. So is it your best recollection that when you initialed this document, UOP v. Crew Levick was not written on it?

A. I would say that it was not, because the chances are that I would see that memorandum before John Leonard saw it.

Q. What was John Leonard's position at the time? A. He was an attorney for Universal in our New York office, and assistant to Mr. Halle.

Q. He was in the employ of Universal, was he? A. Oh, yes.

Q. On a salary? A. Yes.

Q. He was a young man, then? A. Yes.

(Discussion off the record.)

1949

Mr. von Holst: May I ask counsel for Universal what is the exhibit number on this letter? I think you offered it.

Mr. Harris: Universal Exhibit 5.

By Mr. von Holst:

Q. Now, I show you a photostat, Universal Exhibit number 5, and ask you whether any of the writing on that exhibit is yours.

(The witness examined Universal Exhibit 5.)

1950 A. Yes, the initial is mine, over here on the right (indicating).

By Mr. von Holst:

Q. The initial in the box—— A. In the box.

Q. —at the right? A. Is mine.

Q. Opposite the initials LMH, is that right? A. That is right.

Q. Now, at the top of this sheet there is written on, Universal v. Crew Levick? A. That is right.

Q. In whose handwriting is that? A. That is in Behrens', to my best recollection, that is Behrens' writing.

By the Master:

Q. What was your answer? A. That is Mr. Behrens' writing.

By Mr. von Holst:

Q. And that "H" underneath that legend is whose? A. That is Mr. Halle's.

Q. Now, does that recall to your mind anything at all in connection with the payment of five thousand dollars to Morgan Kaufman in July, 1936? A. No more than I have said previously, that I do not charge my memory with those 1952
items, and when I have practically finished with something, why, it passes out of my mind.

Q. Well, then, your answer is that this does not refresh your recollection, is that right, with regard to this transaction? A. Oh, I know that that transaction expired—transpired, but I do not recall it as my having had knowledge of it in 1936, but my initial indicates that I did.

Q. But aside from this document you have no recollection at all of the transaction, is that right? A. No, I haven't.

Q. Now, I hand you Amici Exhibit 25. Do you know in whose handwriting that is?

(The witness examined Amici Exhibit 25.) 1953

A. No. The answer is, no.

By Mr. von Holst:

Q. Now, that exhibit refers to a telephone call from you, does it not? A. Yes, that is what it says.

Q. You notice the date, December 2, 1936, almost at the end of 1936? A. Yes.

Q. Now, do you recall a payment made to Mr. Kaufman in December or the late winter of 1936? A. No.

Q. You have no recollection of that at all? A. No.

1954 *Leo Morgan Healy—For Amici Curiae—Direct*

Q. Now, do you recall a telephone conversation which you had with Lenske or anyone else in the Chicago office, as indicated on this Amici Exhibit 25? A. No, at this time I do not recall.

Q. Now, I show you Amici Exhibit 29, which is addressed to you, is it?

(The witness examined Amici Exhibit 29.)

A. Yes.

1955 *By Mr. von Holst*:

Q. From Mr. Lenske, is that right? A. Yes.

Q. Now, do you recall receiving that letter with a check and the pencil memorandum mentioned in the letter? A. I do not.

Q. And also the letter to Kaufman? A. I do not.

Q. You have no recollection at all concerning that? A. No.

Q. I show you Amici Exhibit 31 and ask you if your initials appear on there.

1956 (The witness examined Amici Exhibit 31.)

A. Yes, right here, those are my—those are mine over the typewritten name.

By Mr. von Holst:

Q. And that is a letter that you wrote to Mr. Lenske at Chicago, isn't it? A. Yes.

Mr. Harris: Does he recall it?

By Mr. von Holst:

Q. Do you remember anything about it? A. No, I do not. Really, I just wonder how one could expect one to know.

Q. Now, I show you Amici Exhibit 37 and ask you if you ever saw that before. That is the pencil memorandum that was enclosed in this letter.

(The witness examined Amici Exhibit 37.)

A. Unquestionably, I saw it before.

By Mr. von Holst: 1958

Q. Now, did you have any conversation with Mr. Halle about that pencil memorandum? A. I don't recall, now.

The Master: What was the first question you asked about it?

Mr. von Holst: Whether he ever saw it before. He says he did.

The Witness: I said, unquestionably I did. It came with this memorandum that has my initial on it, or, rather—this doesn't have my initial, does it?

By Mr. von Holst:

1959

Q. Well, it came to you from Chicago, is that it? A. Well, it came to me, anyway, so I would have gotten it, yes.

By Mr. Harris:

Q. Well, the question is, do you have a present recollection of having seen it or not? A. No, I haven't a present recollection of having seen it.

By Mr. von Holst:

Q. In whose handwriting is Amici Exhibit 37? A. Now, that I really wouldn't know.

Q. Well, is it yours? A. No, it is not.

The Master: Did the witness say his initial is on this?

The Witness: Oh, no, no, no, it isn't on that.

The Master: Oh, I thought you said it was.

The Witness: No, it is on the—referring to the letter that I wrote to Mr. Lenske of December 4, 1936, acknowledging receipt of it.

By Mr. von Holst:

1961 Q. And the letter which you received and the check is this Amici Exhibit 30, is it not?

(The witness examined Amici Exhibit 30.)

A. I do not presently recall having received it at that time, but——

By Mr. von Holst:

Q. Do you recall mailing that letter to Mr. Kaufman with a check? A. No, I don't.

Q. You don't remember receiving this pencil memorandum in that letter—— A. I said——

1962 Q. —that you got from Chicago?

(The memorandum was shown to the witness.)

A. I said that the letter says that it had it, and so unquestionably I had seen it previously.

By Mr. von Holst:

Q. But I asked you whether you remember receiving that pencil memorandum. A. No, I don't remember receiving it.

Q. Do you know anything about for whom that pencil memorandum was prepared, at whose request? A. The mem-

orandum indicates that it is a request that was made by me of Mr. Lenske. Mr. Lenske says, "You will also find enclosed the pencil memorandum requested by Mr. Halle.", and it is stated here that I made the request of Mr. Lenske.

Q. And it also shows, this letter, Amici Exhibit 29, that the pencil memorandum was requested by Mr. Halle, doesn't it? A. Yes.

Q. And then you transmitted Mr. Halle's request to Mr. Lenske, is that right? A. Well, the documents here say I did, yes.

1964 Mr. Harris: Well, Mr. Von Holst, we don't deny any of these things. We will concede the truthfulness of these memoranda. I don't know why you are trying—the man just can't remember them, but we don't question them any more than he does.

The Master: Well, is the pencil memorandum referred to in Amici Exhibit 29, Amici Exhibit 37?

Mr. von Holst: Yes, sir.

Mr. Harris: Oh, yes.

By Mr. von Holst:

1965 Q. Now, you will notice that this pencil memorandum, Amici Exhibit 37, shows payments totaling fifty thousand dollars, does it not? A. Yes.

Q. Do you know to whom those payments have been made? A. Well, the memorandum indicates that they were payments that were made to—to Mr. Kaufman, does it not?

Q. You have no recollection of that desire on the part of Mr. Halle to find out what had been paid to Mr. Kaufman? A. No, I haven't it presently in my mind, that particular telephone conversation or request of Mr. Halle.

Q. Well, I won't confine it to that particular telephone conversation, I want to know whether you recall having any conversation at all with Mr. Halle about payments to Mr.

Kaufman, or the total amount of those payments, how much they amounted to, why he wanted to know how much they were. A. Well, let's get one question at a time. What is the first one?

Mr. von Holst: Read the question.

(The question was repeated by the reporter as follows:

"Q. Well, I won't confine it to that particular telephone conversation, I want to know whether you recall
1967 having any conversation at all with Mr. Halle about payments to Mr. Kaufman. . . ."

A. I presently, now, do not recall conversation that I had in 1936. I don't know how it can be expected that one of even average intelligence would recall conversations that transpired in 1936.

Mr. von Holst: Well, I suggest, if the Master please, that if the witness would refrain from commenting that we could progress faster.

Mr. Harris: But he keeps insisting he does not recall and you keep trying to show he does recall.

Mr. von Holst: I have a right to probe the wit-
1968 ness's memory.

Mr. Harris: You said yesterday a witness has a right to explain his answers, and I think the Master so ruled.

The Master: Yes, he has a right to explain his answers, but, of course, his answers should be responsive.

By Mr. von Holst:

Q. Do you recall any conversation in the latter part of the year 1936 with Mr. Halle about Mr. Kaufman's fees? A. No, I do not.

Q. When was the first time you ever heard that Morgan S. Kaufman was an attorney for Universal? A. Well, I really can't recall that, either.

Q. Can't you—— A. The first time I ever heard, no, I can't recall it.

Q. Well, when is the first time that you have any distinct recollection of knowing that Morgan S. Kaufman had been or then was an attorney for Universal? A. Again, I repeat that I don't know how it can be expected for me to remember that.——

Q. Well,—— A. —the day or the hour.

Q. No, sir, I am not asking you for the hour or the day, 1970
but approximately how long ago was it that you learned that Morgan S. Kaufman was an attorney for Universal? A. Well, it has been several years.

Q. About how many years? A. Well, that I wouldn't know, exactly—several. It doesn't necessarily mean forty.

Q. Well, can you give us any better definition between several and forty? A. Probably seven.

Mr. von Holst: No further questions.

Cross Examination by Mr. Harris:

Q. Now, Mr. Healy, I know how anxious you are to be
mathematically precise and exact, you have a mania for not 1971
answering unless you feel that you can be mathematically precise,——

Mr. von Holst: I object to these speeches, Your Honor. They have no place in this proceeding.

Mr. Harris: I am explaining what I am going to say.

By Mr. Harris:

Q. I am not going to attempt to pin you down to years or dates, but I want to know, first, whether or not your work

with Universal for a number of years has involved the handling of innumerable details, many of which were for Mr. Halle. A. That is right.

Q. And Mr. Halle is an elderly man? A. That is right.

Q. And he is out of the office frequently? A. That is so.

Q. In Chicago, or in his home, or elsewhere? A. Yes, sir.

Q. And he does constantly request you to do things as his alter ego? A. Yes, sir.

Q. Deliver telephone instructions, carry out other duties,
1973 in innumerable detail, is that right? A. Yes, sir.

Q. And if you did telephone to Mr. Lenske once or twice and ask him to draw a check at Mr. Halle's request, that would not be the kind of thing which would impress itself on your mind, would it?

Mr. von Holst: I object to that.

By Mr. Harris:

Q. Would it?

Mr. Harris: This is cross examination.

Mr. von Holst: I still object to the question as calling for mere——

1974

A. It would not.

Mr. von Holst: —argument and conclusion—just a moment, Mr. Witness, I am making an objection.

Mr. Harris: Well, now, we are finding out why he can't remember, that is all. That involves a question of his mental processes.

The Master: Well, I don't think it is very important, but I will allow the question.

Mr. Harris: Will you read it, please, Mr. Reporter?

(The question was repeated by the reporter as follows:

"Q. And if you did telephone to Mr. Lenske once or twice and ask him to draw a check at Mr. Halle's request, that would not be the kind of thing which would impress itself on your mind, would it?")

A. It would not.

By Mr. Harris:

Q. Now, generally speaking, you were referred to some of these exhibits, Amici Exhibit 9, for instance—— 1976

Mr. Harris: Can you show him, let him see that, Mr. von Holst?

Mr. von Holst: Yes, sir.

By Mr. Harris:

Q. That is a memorandum which was sent from Chicago to Mr. Behrens from Chicago, from Mr. Lenske to Mr. Behrens, under date of March 17, 1936. The received stamp indicates that it was received in New York at the Universal office on March 19, 1936. Your initial indicates that you read it. 1977

(The witness examined Amici Exhibit 9.)

A. Yes, sir.

By Mr. Harris:

Q. I don't ask you whether you recall it on March 18, 1936, or in the year 1936, or in the year 1935, but reading that through do you not recall that at some time you did telephone Chicago and pass on a request by Mr. Halle that one—that some checks—that a check on one or more occa-

sions—no matter how general this is—be drawn and sent on for or to Mr. Kaufman? Do you have that general recollection? A. Yes, I have a general recollection of having done it, yes.

Q. Now, do you not have a general recollection which might be refreshed by calling your attention to the names of persons of having done the same thing with respect to other lawyers—— A. Oh, yes.

Q. —for Mr. Halle? A. I have.

Q. For various things and matters that were to be attended to in Chicago, where Mr. Halle requested you as an
1979 officer of the company to deliver his instructions to Chicago? A. Innumerable times.

Q. And your position requires a great deal of detail stuff of that sort which involves merely carrying out Mr. Halle's wishes and instructions, and involves no discussion or volition on your part, is that not so? A. That is right.

Mr. Harris: I think that is all.

Redirect Examination by Mr. von Holst:

Q. But you have no general recollection, as I understand it, Mr. Healy, of any conversations with Mr. Halle regarding
1980 Morgan S. Kaufman? A. Well, yes, I have general recollections, but they don't go back to 1936, that I can remember now.

Q. Well, when do they go back to? A. Well, even for that I couldn't pin myself down to a year.

Q. All right, then, regardless of the times, you had conversations with Mr. Halle regarding Morgan S. Kaufman, is that right? A. Unquestionably I did, or I never would have written a request and asked that checks be sent down.

Q. I am not asking about these 1935 and 1936 transactions specifically, I understand that you have a general recollection of having discussed Mr. Kaufman with Mr. Halle,

at any time. A. Yes, it could have gone back to 1939, when Mr. Parkhurst—it isn't a usual occurrence in our office to be called by the F. B. I., which I do naturally recall that.

Q. You recall the 1939 conversations with Mr. Halle when Mr. Parkhurst called, is that right? A. Yes.

Q. What did Mr. Halle tell you then? A. I don't know specifically.

Q. Well, generally. A. Oh, I presume that—I presume that he told me to get the checks down, and so forth. I naturally reported to Mr. Halle that the F. B. I. agent was in.

1982

Q. And that is all he told you, get the checks down here? A. Well, I can't definitely recall whether that is all or not.

Q. Well, I want to know if you recall anything else that transpired at that conversation. A. No, I do not.

Q. Do you recall any conversation since 1939 with Mr. Halle regarding Morgan S. Kaufman? A. It is likely that I talked to Mr. Halle about it when the United States Attorney's office asked for memoranda and checks.

Q. Well, what was said—— A. I would naturally talk to him about it.

Q. What was said on these occasions—— A. I do not recall——

1983

Q. —between you and Mr. Halle? A. —specific conversation. Unquestionably, I reported to him that the United States Attorney's office had asked for checks and memoranda and correspondence.

Q. Did you ever see Mr. Morgan S. Kaufman? A. The likelihood is that I did see him.

Q. Well, regardless of the likelihood, what is your best recollection as to whether you have ever seen Mr. Morgan S. Kaufman? A. I think I did see him on one occasion.

Q. When was that? A. That I wouldn't know.

Q. About when? I am not asking you—— A. Again,——

1990

Transcript of Hearing, September 11, 1942.

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Friday, September 11, 1942, at 10:15 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

1991

J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois)

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Illinois)

Amici curiae.

ROBERT W. POORE, Esq. (77 West Washington Street, Chicago, Illinois)

SIDNEY NEUMAN, Esq. (77 West Washington Street, Chicago, Illinois)

Counsel accompanying amici curiae.

1992

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.)

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey)

JOHN R. McCULLOUGH, Esq. (100 Broadway, New York, N. Y.)

representing Universal Oil Products Company.

The Master: I received a number of exhibits from Mr. Gahagan this morning, but not the one that they are all interested in that they say was sent. I have a list here. It is all right, if you want to use these or look at them you are at liberty to do so:

Check, Universal Oil Products, $25,000.

The voucher for that from the Accounting Department, and the receipt.

Check for $10,000.00, dated March 18th, 1936, and the 1994
voucher accompanying the same.

Memorandum from Behrens to Lenske—two memoranda, one dated July 23, 1936, and the other July 27, 1936.

Check for $5,000.00 to Kaufman, and the voucher accompanying the same.

Copy of the letter sending the check to Kaufman.

Letter of Kaufman to the Universal Oil Products Company acknowledging the check.

Another check to the order of Kaufman, in the amount of $10,000.00, a voucher, and a handwritten memorandum of the Accounting Department dated December 2, 1936.

Memorandum dated December 4, 1936, to Lenske from 1995
Healy.

Mr. Harris: Well, what is missing?

The Master: The thing that is missing is the——

Mr. Neuman: Accounting requisition.

The Master: They said they sent it to the District Attorney down here.

Mr. Harris: Mr. Gleason?

The Master: We are after Mr. Gleason all the time to try to get it. So far we have not been able to do it. Someone has gone down to try to get a hold of him personally.

Mr. von Holst: Well, we have the original of the Amici Exhibit 13, this distribution record, voucher?

Q. —to fix the day of the month. A. I don't know exactly, but I do know that he called at our office at one time.

Q. Was that before or after 1939? A. That I couldn't say.

Q. No idea at all of the time when he called? A. I think it may have been before 1939.

Q. You say he called at the offices? A. Yes, at Universal's offices, yes.

Q. In New York? A. In New York, yes.

Q. Was that the only time you saw him? A. Yes.

Q. Do you recall any other conversations with Mr. Halle
1985 regarding Mr. Kaufman except those when the F. B. I. called as you have testified? A. I mentioned the fact that I undoubtedly talked to Mr. Halle when the United States Attorney's office had asked for certain memoranda.

Q. Yes, but I mean in addition to those occasions that you have mentioned. A. No, I don't. I probably would sit with Mr. Halle for three or four hours in the course of a day.

Q. You have intimate contacts with Mr. Halle, do you? A. Yes.

Q. Do you know whether Mr. Morgan S. Kaufman is still attorney for Universal? A. No, I do not.

Q. Have you had a conversation with Mr. Halle since
1986 this present investigation, these proceedings before Master White have been started? A. Yes, I, probably, I would have told him that I was coming down here, he would know it. I just talked in general fashion with him.

Q. And how recently was that? A. Oh, it was—let me see—night before last.

Q. Do you remember that conversation? A. Other than the fact that I was going down to Philadelphia to testify.

Q. And that is all you said to him and he to you? A. Oh, yes.

Q. Did you talk on that occasion with Mr. Halle about the testimony that he had given in these proceedings? A. No, I didn't.

Q. Did you ever speak to him about that? A. Why, yes, I think I recall, how he made—I asked him how he made out,——

Q. What did he say? A. —which would be a very natural thing.

Q. Well, is that another surmise, or do you have a recollection of it? A. No, it is probably surmise.

Mr. von Holst: No more.

The Master: Gentlemen, do you want 10:15 tomorrow, again? 1988

(Discussion off the record.)

The Master: 10:15 tomorrow morning.

(Adjourned to Friday, September 11, 1942, at 10:15 o'clock A. M., Eastern War Time.)

1989

1996 *Colloquy*

The Master: I think so. Here is the whole bunch of it, if you want to look at it.

Here is the list. You can just put that list on the record, Mr. Rodebaugh, as papers produced this morning as having been received from Mr. Gahagan.

The Master submitted for the record a copy of the following letter acknowledging receipt of documents:

"September 11, 1942.

1997 In re Root Refining Company v. Universal Oil Products Company—C. C. A. 3rd, October Term, 1940, Nos. 5546 & 5648—WHG ELC

Mathias F. Correa, Esq.,
United States Attorney,
Department of Justice,
United States Court House,
Foley Square,
New York City.

Dear Mr. Correa:

1998 This will acknowledge, with thanks, receipt of the following papers relating to payments to Morgan S. Kaufman that were received from Universal Oil Products Company:

Check of Universal Oil Products Co. No. 4317, dated October 18, 1935, to the order of Morgan S. Kaufman for $25,000.

U. O. P. Accounting Department order dated October 18, 1935 for check No. 4317.

Receipt from Morgan S. Kaufman dated October 22, 1935.

Check of Universal Oil Products Co. No. 4425, dated March 18, 1936, to the order of Morgan S. Kaufman, for $10,000. 1999

U. O. P. Accounting Department voucher No. 10095.

Memorandum dated July 23, 1936 from W. M. Behrens to B. G. Lenske.

Memorandum dated July 27, 1936 from B. G. Lenske to W. M. Behrens.

Check of Universal Oil Products Co. No. 4495, dated July 27, 1936, to the order of Morgan S. Kaufman for $5,000. 2000

U. O. P. Accounting Department order dated July 27, 1936 for check No. 4495.

U. O. P. Accounting Department voucher No. 7203.

Copy of letter, dated July 27, 1936, to Morgan S. Kaufman.

Letter of Morgan S. Kaufman to Universal Oil Products Co., dated July 29, 1936, acknowledging receipt of check.

Check of Universal Oil Products Co. No. 4597, dated December 2, 1936, to the order of Morgan S. Kaufman. 2001

U. O. P. Accounting Department order dated December 2, 1936, for check No. 4597.

U. O. P. Accounting Department voucher No. 12005.

Handwritten memo. U. O. P. Accounting Department dated December 2, 1936.

Memorandum dated Dec. 4, 1936, to B. G. Lenske from L. M. Healy.

Yours very truly,

T. R. White")

MC

2002 *Colloquy*

Mr. Harris: Is Mr. Ungerleider going to testify today?

Mr. Thiess: No, I might tell you about that. I communicated with Mr. Ungerleider, and Mr. Ungerleider is in Washington, and he suggested that Mr. Arthur Ungerleider come over to see me. He came to see me, and he said they have not been able to collect the papers, all the papers, and after talking with them we think it would save everybody's time to wait until we get them, and in the next session we will take his testimony.

Mr. Harris: So there will be Mr. Lindahl and Mr. Lord?

2003 Mr. Thiess: That is right.

Mr. Harris: We may get through before two o'clock.

Mr. Thiess: Well, the trouble is Mr. Lord is coming at two o'clock.

Mr. Harris: Is that going to take very long?

Mr. Thiess: I don't think so. I think we can get through all right.

(Discussion off the record.)

Mr. von Holst: Now, if the Master please, we would like to make this suggestion, that the examination of Mr. Lindahl proceed, using the photostats of Amici Exhibit 11 and 13,

2004 and if and when the originals of those two exhibits are delivered to the Master, if they could be sent by you to us by registered mail so that we could examine the originals, and see then if on the originals there were any further questions that should be asked the witness——

Mr. Harris: Well, we should certainly object to that, they are our property, and we would not consent to their going out of the hands of Mr. White or the United States Attorney.

Mr. von Holst: That would mean, of course, that we would have to come down here specially to examine them, whereas as a matter of fact——

2005

Mr. Harris: They will be found today, perhaps.

Mr. von Holst: —there will be perhaps no further questions to be asked on the originals, but we can't tell until we see them.

The Master: They may be here today. If not, of course, they could be here at the next hearing, or you could inspect them if you happened to be in this neighborhood in the meantime.

Mr. von Holst: The only thing about that is that if they are not here today and we inspect them at the next hearing, then under those circumstances we might find that we desire to ask some more questions and we will have to have Mr. Lindahl available.

2006

Mr. Harris: I really think it is inconsiderate of you, you have had over a month since the last hearing, not to make sure you were going to have those here, when Mr. Lindahl has come out from Chicago.

Mr. von Holst: I don't get that at all, if the Master please,——

Mr. Harris: I don't know that you want them——

Mr. von Holst: ——we have been trying to get those two records, as the Master will know, since the last hearing,——

The Master: Yes.

2007

Mr. von Holst: —since it developed for the first time at the last hearing that they were not available.

The Master: Yes, we have been trying for some time to get them, we had no reason to suppose we could not, but it may be that we will have them before the end of the day. I hope so.

Mr. Harris: I hope so, too.

The Master: Well, you may proceed, Mr. von Holst.

2008 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

WILLIAM LINDAHL, recalled.

Direct Examination (Continued) by Mr. von Holst:

Q. Mr. Lindahl, referring to Amici Exhibit 4, I believe you stated yesterday that you were unable to find any written authority of Mr. J. J. Mitchell for the issuance of the voucher for which this exhibit is the voucher requisition, is that right? A. I believe that is right, yes.

Q. Now, do you recall if Mr. Mitchell told you anything about what that requisition was for and what the check was for? A. No, only that I have perhaps one hundred vouchers
2009 a day, and he called me in and wanted me to write a check to Kaufman, and told me to say, legal service to date in connection with Root case.

Q. Yes. A. That is all I would——

Q. That is all you recall of what he said to you then? A. Yes.

Q. Now, the words "Winkler-Koch" that are interlined here were not on the voucher requisition, Amici Exhibit 4, when you drew it, were they? A. No.

Q. And they are not in your handwriting, the words "Winkler-Koch"? A. No, they are not.

2010 The Master: You have the original of that here.

Mr. von Holst: Yes, if the Master please, I don't think there is any need to refer to the original of that one.

Mr. Harris: Let's look at it and see. The interlineation appears from the original to have been in pencil, and my recollection is that Mr. Lenske testified that he put it in to further identify it.

The Master: It is curious that the words in pencil seem to be blacker than the ink words.

Mr. Harris: That is right, they are a little heavier.

The Master: In the photostat.

Mr. von Holst: In the photostat.

The Master: Yes.

Mr. von Holst: Yes.

The Master: I didn't mean to interrupt you, Mr. von Holst.

Mr. von Holst: It is perfectly all right.

Mr. Harris: Did you ask the witness if this voucher requisition appeared to be approved by Mr. Mitchell's signature?

Mr. von Holst: I haven't finished my examination yet. 2012

Mr. Harris: All right, didn't recall.

Mr. von Holst: I think there is no need to cover with this witness all the facts that were covered by Mr. Lenske.

By Mr. von Holst:

Q. Do you know when Mr. Lenske put that on, Winkler-Koch? A. No, I don't know.

Q. Did he talk to you about it when he put it on, did you recall? A. I don't recall him doing that, no.

Q. Did you see this exhibit, Amici Exhibit 4, the original of it—maybe I better refer in this question to the original. I show you the original voucher requisition. Did you see that when it was withdrawn by Miss Baxter in 1939? A. No, I can't say I did. 2013

Q. Have you seen it at any time since you drew the requisition until recently? A. No, I don't recall ever seeing it after that.

By Mr. Harris:

Q. Until today? A. Until today, is the first time I have seen it.

2014 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

By Mr. von Holst:

Q. Now, referring to the photostat, Amici Exhibit 11, I believe you stated yesterday that that was in your handwriting—or, I will put the question again: Is the exhibit in your handwriting?

(The witness examined Amici Exhibit 11.)

A. Yes, it is.

By Mr. von Holst:

2015

Q. All of it, except the—— A. Except the approval is here.

Q. Except the approval? A. That is right. Well, the date isn't in my handwriting, looks like Lenske's 3/18/36 up there, but the rest of it is all mine.

By the Master:

Q. The rest is all yours? A. Yes, sir.

Q. Including the last line in the smaller——

By Mr. von Holst:

2016

Q. Including the legend, UOP v. Crew Levick? A. Yes.

Q. Equity suit filed 2, is that 29, 36? A. Well, I imagine it is 2/20.

Mr. Harris: It seems to have been perforated, part of that figure.

The Witness: I imagine that is 2/20. I don't know. If I saw the original I could tell better.

Mr. von Holst: You appreciate that we haven't got the original here this morning.

The Witness: Yes.

By Mr. von Holst:

Q. But you think the date at the top here is in Mr. Lenske's handwriting? A. That looks very much like his. Yes, that is his. I evidently left the date off and he just put it in.

Q. Now, this legend at the bottom, UOP v. Crew Levick, Equity suit filed 2/20/1936, do you recall whether that is in pencil or ink on the original? A. No, I don't recall. I can't tell from the photostat whether it is ink or——

Q. No, whether it is ink or pencil? A. The fact that we had the other one, where pencil showed up like ink, why,—— 2018

Q. You can't tell from that photostat whether it is ink or pencil? A. No.

Q. And you have no recollection? A. On the face of this, I would say it is ink.

By the Master:

Q. Excuse me, but I can't quite read that myself. Was that correctly read to you by Mr. von Holst, the last line?

Mr. von Holst: This, down here?

2019

By the Master:

Q. Did he read it as you make it out? A. That is UOP Co. v. Crew Levick Equity suit filed—well, I can't tell what the date is there.

Q. It is abbreviated, isn't it, eq. suit? A. Eq., yes.

By Mr. Harris:

Q. And "Co." is abbreviated? A. And "Co." is abbreviated, it is UOP Co.

Mr. Harris: Versus is vs.

The Master: Yes, all right. I couldn't quite read it. It is a little bit illegible as it appears in this copy.

Mr. Harris: This may be clearer.

(Another copy was shown to the Master.)

The Master: Yes, that is clearer.

By Mr. von Holst:

Q. Now, I also show you photostats of Amici Exhibit 12 and Amici Exhibit 13. Now, I understand from Mr. Lenske
2021 —and correct me if I am wrong—that when the voucher requisition is made up the voucher file would consist of, finally, in this instance, the document Amici Exhibit 11 and the other two documents, Amici Exhibits 12 and 13, the latter two being the one side and the reverse side of the same paper. Is that right? A. That is right.

By Mr. Harris:

Q. So-called jacket? A. This is what we call the voucher.

By Mr. von Holst:

Q. "This" being Amici Exhibit 12, is that right? A. It
2022 looks like 12.

Q. Amici Exhibit 12 is the voucher, is that right? A. Well, that is what we call the inside of the voucher.

Q. Yes.

The Master: What is the number of that voucher?

Mr. Neuman: That is one you don't have, either.

The Witness: 3120.

The Master: You don't have that.

By Mr. von Holst:

Q. And Amici Exhibit 13 is the reverse side of Amici Exhibit 12, is that right? A. That is right.

Q. And these three exhibits, these three exhibits 11, 12 and 13 all pertain to the same transaction, do they not?

(The witness examined the exhibits.)

A. Yes.

By Mr. von Holst:

Q. And it is true, is it not, that the typewritten matter appearing on Amici Exhibit 12, which is the voucher, is the carbon copy of the remittance slip which goes to the purchaser with the check? A. That is right. 2024

Mr. Harris: Not purchaser; payee.

Mr. von Holst: Will you change my question? Payee of the check.

By Mr. Harris:

Q. If a check was sent, is that right? A. I don't know—if the remittance——

By Mr. von Holst:

Q. If the remittance was sent or if the remittance slip was sent? A. If the slip was sent with the check that would be the copy to go with the check, yes, sir. 2025

Q. That is to say, the original remittance slip would go with the check, is that right? A. That is right.

Q. And the typewriting on the voucher, Amici Exhibit 12, would be the carbon of that remittance slip? A. That is right.

Q. Now, it is a fact, isn't it, that the person preparing the voucher, as, for instance, Amici Exhibit 12, gets his information as to what to put on the remittance slip, and, therefore, on the voucher, from the voucher requisition? A. Yes, from this requisition here, on 11.

2026 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

Q. So that the person who prepared Amici Exhibit 12 would get what he put on the remittance slip and on the voucher from Amici Exhibit 11? A. That is right.

Q. Now, I call your attention to the fact that on Amici Exhibit 12 the typewritten matter does not contain the words "UOP vs. Crew Levick. Eq. suit filed 2/20/36". A. That is right.

Q. Now, will you state whether when you wrote the voucher requisition, Amici Exhibit 11, the words "UOP vs. Crew Levick, Eq. suit filed 2/20/36" were on the requisition at the time that you wrote it? A. I would say yes, it was
2027 on there.

Q. Do you say that you wrote it all at one time? A. Yes, sir.

Q. You say that you didn't add "UOP vs. Crew Levick, Eq. suit filed 2/20/36" at a later time? A. No, sir.

Q. And is that a definite recollection on your part? A. Well, from verifying that and from seeing these exhibits here I can say that that would come back to my memory, that that was on there at the time I wrote that.

Q. What is there in seeing these exhibits that makes you believe that that was on at the time that you wrote—that you wrote it all at once, including the legend to which I called your attention? A. Well, there is two definite things
2028 here that I can pick out. If we had the original I could show you very clearly that there, across this voucher there is a paid, a perforated paid stamp, and that happens to go through this voucher in such a way that you can follow it through, going right through the dates there, up through the l's here, see, where the letters are missing. The perforated stamp doesn't show up there very plainly.

By Mr. Harris:

Q. That is one reason. What is the other one? A. The other reason is this, that on the exhibit here——

Q. What exhibit?

By Mr. von Holst:

Q. Which exhibit?

By Mr. Harris:

Q. Exhibit 13? A. 13, if I hadn't written this at the time of issuing this requisition that would never have appeared here.

2030

By Mr. von Holst:

Q. On Exhibit 13? A. Yes.

Q. Any other reason? A. Well, I don't know of any other reason. It looks very obvious that it certainly was there when I wrote the requisition.

Q. Now, refe ring to Amici Exhibit 13, do you observe that the typewritten matter, as follows, "Morgan S. Kaufman, 9 E. 46th St., New York" "42—H—Reserve for Legal Bills", that the typewritten letters all slant down? A. Well,——

Q. Whereas "U. O. P. Co. vs. Crew Levick Eq. suit filed 2/20/36" slant up. A. Well, the only explanation I would have for that, that she perhaps adjusted the voucher in the 2031
machine.

Q. Do you also observe—— A. Well,——

Q. Pardon me, are you finished? A. Well, I might say the girls might have a lot of vouchers to voucher. You see, we have many of these every day, and if she is in a hurry she will just put the paper in the machine, if it comes straight, it is straight, if it comes crooked she perhaps would have to adjust it. I don't know how these stenographers move it around, you know, occasionally.

Q. You also observe that the $10,000.00 on Amici Exhibit 13 is opposite the words "Legal Bills", and not opposite the date 2/20/36, do you not? A. Yes.

2032 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

Q. Now, wouldn't it be normal for the amount to be placed opposite the last line of the accompanying legend? A. No.

Q. Well, I call your attention to Amici Exhibit 27; which is the reverse side of a voucher for a payment of December 2, 1936, wherein the typewritten legend occupies two lines and the amount is opposite the last line. A. That is right.

Q. Wouldn't that indicate that that would be the normal practice, to carry your amount, that is to say, the dollars, so as to make it opposite the last line of the accompanying legend? A. No, no, she has got it on the last line of the
2033 name of the account, which is all she has to put it. You see, the account is Reserve for Legal Bills, $10,000.00, and that is what she has done. She has written out the name of the account and put the amount after it.

Q. So, referring again to Amici Exhibit 11, you are quite sure that you wrote "U. O. P. Co. vs. Crew Levick Eq. suit filed 2/20/36" at the same time that you wrote the rest of the requisition and before the approvals were put on the instrument? A. I would say so, yes, sir.

Q. Now, I call your attention to the fact that that legend which I just mentioned follows after the words "Charge to" on the form, isn't that right? A. That is right.

Q. Now, that is not the usual place to put the identify-
2034 ing matter for which the payment is being made, is it? A. That is only for our own information, that that is put down there.

Q. Now, this blank which you use, or of which Amici Exhibit 11 is one, this form has a heading "On account of", does it not? A. That is right.

Q. And isn't it true that what follows after those words "On account of" is supposed to be the identifying data showing for what the payment is being made? A. That is right.

Q. Whereas what follows after the words "Charge to" is purely accounting data? A. That is right.

Q. Isn't that right? So that on the remittance slip that goes to the payee, and on the voucher, which is a copy of that remittance slip, what appears is what follows after the words "On account of" on the voucher requisition, isn't that true? A. That is right.

Q. And neither the remittance slip nor the voucher contains the accounting data? A. That is right.

Q. And the distribution record, on the other hand, does contain the accounting data? A. That is right.

Q. And does not normally contain anything else but the accounting data, does it? A. That is right.

Q. In other words, on this Amici Exhibit 13 that "U. O. 2036
P. Co. vs. Crew Levick Eq. suit filed 2/20/36" is wholly useless, isn't it? A. It is only for our own information, that if we want to compile figures on a particular suit, we have to analyze the Reserve for Legal Bills and spread them over whatever suits that they perhaps pertain to.

Q. Do you get that from the distribution record, or do you get that from the voucher requisition? A. Well, you get it from the voucher itself; you could either get it from the voucher requisition or the voucher, they are all attached together.

Q. You wouldn't normally get it from the distribution record, which is the reverse side of the voucher, would you? 2037
A. Well, you would either get it from here (indicating) or from here (indicating).

By Mr. Harris:

Q. What do you mean by "here" and "here"?

Mr. von Holst: Just a second, we will straighten that out.

By Mr. von Holst:

Q. Either from Amici Exhibit 13 or from Amici Exhibit 11, is that right? A. That is right.

2038 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

Q. Well, is it your position that it is a normal thing for the distribution record to show the identification of the suit in which the payment is being made? A. When possible we can, yes, it is our regular practice to show whatever information we can pertaining to a particular suit.

Q. On the distribution record? A. Yes, yes.

Q. In spite of the fact that the information is on the reverse side of the distribution record, which is the voucher? A. Yes, that is all right.

Q. In other words, it is the normal practice for you to put it in both places? A. Well, if we are told to show this,
2039 pertaining to this Crew-Levick suit, why, it would appear here (indicating).

Mr. Thiess: By "here" he means on——.

The Witness: On Exhibit—what is it—12.

Mr. von Holst: Yes.

The Witness: See.

The Master: Exhibit 12?

Mr. von Holst: Yes.

By Mr. von Holst:

Q. Now, there is no reference on Amici Exhibit 12 to the
2040 Crew-Levick case, is there? A. No, there is not.

Q. Doesn't that also indicate to you that when Amici Exhibit 12 was made up there was nothing on Amici Exhibit 11 to identify the payment with the Crew-Levick case? A. No.

Q. Wouldn't the person making up Amici Exhibit 12 put on it everything identifying the payment which appeared on Amici Exhibit 11? A. No, not necessarily, I don't recall it, but I just perhaps got instructions to write out, retainer for 1936 services rendered in connection with our pending litigation per phone conversation with Mr. Healy and Mr. Lenske.

Q. Do you remember who you got those instructions from? A. No, I don't recall, but offhand I would say I got them from Mr. Lenske.

Q. Isn't it a fact that the typewritten matter appearing on Amici Exhibit 12 is exactly the same as your longhand writing on Amici Exhibit 11, following after the words "On account of", and stopping before you come to the heading, "Charge To". A. That is right.

Q. It is identical, isn't it? A. That is right, yes, it is identical.

Q. Now, I show you Amici Exhibit 4, which you have 2042
approved, I believe—— A. That is right.

Q. —and I call your attention to the fact that that reads, "On account of Legal services to date in connection with the Root, Winkler Koch case and pending matters". A. That is right.

Q. Now, disregarding the "Winkler Koch" it says in connection with the Root case and pending matters,—— A. Yes, sir.

Q. —is that right? Now, that identification of the suit occurs in this requisition, Amici Exhibit 4, following on the words, "On account of"? A. That is right.

Q. Now, in Amici Exhibit 11, if when you were drawing the requisition you knew that this was a charge in the Crew- 2043
Levick case, wouldn't it have been normal for you to have put the statement that it was for services in connection with that case following the words "On account of", just as you did in Amici Exhibit 4? A. Not necessarily.

Q. You have—— A. I might——

Q. Pardon? A. I might just as well have written, retainer for 1936.

Q. Which is what you did write? A. Yes.

Q. What you wrote was, "retainer 1936 for services rendered and to be rendered in connection with"—and then you said—"our pending litigation". Now, if you had known that

that was the Crew-Levick case that this payment was being made for, wouldn't you have said, "and to be rendered in connection with the Crew-Levick case"? A. No, not necessarily.

Q. Well, wouldn't that have been the natural thing to do, Mr. Lindahl?

Mr. Harris: Now, I object to that. That is argumentative. You have asked the question four or five times.

The Master: I think that cross examination is
2045 proper.

Mr. Harris: He has asked to have the answer several times.

Mr. von Holst: Will you read the question?

(The question was repeated by the reporter as follows:

"Q. Well, wouldn't that have been the natural thing to do, Mr. Lindahl?")

A. No, it would not have been a natural thing, because I imagine that this has been passed on to Lenske by Healy over the phone and if it was a memorandum, I just copied
2046 what was on the memorandum.

By Mr. von Holst:

Q. I show you Amici Exhibit 10, which Mr. Lenske has testified was his own memorandum of what Mr. Healy telephoned to him. A. Yes.

Q. You notice that there is no reference in there to the Crew-Levick case? A. That is right.

Q. So you would not have gotten your information for making this requisition, Amici Exhibit 11, from Mr. Lenske's instructions from Mr. Healy as recorded by him on Amici Exhibit 10? A. Well, he has only put down there that he

requested the check for ten thousand. He has no explanation here. It was verbally, I suppose, between Mr. Lenske and I.

Q. In other words, you must have gotten your authority and your information for drafting Amici Exhibit 11 from Mr. Lenske, isn't that right? A. Yes, sir.

Q. And he at the time made a pencil memorandum or ink, I don't know which,——

Mr. Harris: A memorandum.

By Mr. von Holst: 2048

Q. —a memorandum, of what that telephone conversation was. A. That is right.

Q. And he passed that information on to you, did he not? A. That is right.

Q. And on the strength of that information you drew up the requisition, Amici Exhibit 11? A. Yes, sir.

Mr. von Holst: At this point, if the Master please, at the last hearing and during the taking of the deposition of Mr. Lenske request was made upon plaintiff if they could find any further distribution records with the identification of the suit as shown on Amici Exhibit 13 to produce them, and we asked the plaintiff to 2049
produce any other requisition records——

Mr. Neuman: Vouchers.

Mr. von Holst: Well, it is a distribution record which is the reverse side of the voucher, showing the identification of the suit, if they have found any.

The Master: Yes, I recall that, to see what the practice was.

Mr. Harris: Well, we naturally have not gone through all of them but we found a few, scattered here and there, that seem to illustrate the point sufficiently, and I now produce them and would like to mark them

2050 *Colloquy*

for identification and call them to the attention of the Master, and Mr. von Holst can question the witness about them if he so desires.

When you refer to us as the "plaintiff" I don't know just what you mean.

Mr. von Holst: I am sorry, I should have said "Universal".

Mr. Harris: We are not in an habitual controversy, as I understand it.

Now, here is a requisition dated January 2, 1929, to issue a check in favor of Thomas G. Haight, for
2051 $10,000.00. Under the legend "On account of" appears: "To apply on account as per telephone request of FLB"—which I take to be Frank L. Belknap—"to HJH"—which I take to be H. J. Halle—"from New York 12/26/28—as per attached memo."

Then under "Charge to" there is 30-Infringement, which I understand to be the account in the ledger, and after that, at that point, the title of the case, Texas vs. Warner Quinlan.

I observe that on the distribution sheet attached there is 30-Infringement, and the amount of the fee on the same line, $10,000.00, and on the line below the
2052 amount of the fee, Texas vs. Warner-Quinlan Co.

I also call attention to the fact that the original perforation stamp indicating payment and the date on the face of the requisition runs through Texas vs. Warner Quinlan and the signatures of approval in such a way as to indicate that that "Paid" stamp must have been put on after those words were written in.

I also produce a voucher and requisition dated January 4, 1936, directing the issuance of a check in favor of Hugh M. Morris, for $5,000.00, and under the legend "On account of" appears "in payment of the balance for services rendered in the Root case—as

per Behrens letter to B. G. Lenske of Jan. 2, 1936", and under the legend "Charge to", "42-H Reserve for Legal Bills (Root case)", the name of the case appearing under "Charge to".

And again, while it is not so clear there, the perforation appears to have been put on at that time.

On the distribution sheet there is merely a reference to the account 42-H, $5,000.00.

I also produce a requisition dated May 15, 1940, to the Accounting Department, directing the issuance of a voucher in favor of Thomas G. Haight for 2054
$15,000.00. Under the legend "On account of" appears, "services rendered in the Root and Globe cases—as per request of Mr. H. J. Halle (see his letter to M. Carter 5/14/40)", and under the legend "Charge to" there is "42—Reserve for Patent Litigation—Root Suit— $3300.00", and under that, ditto, 42—Reserve for Patent Litigation, and written out, "Globe Suit— $11,700.00".

And, again, the "Paid" stamp seems to cut through some of the letters in the names of the suits.

On the distribution sheet there are two lines, 42F, Reserve for Pat. Lit. Root Suit, identifying the suit, $3300.00; under that, ditto, under 42F, Reserve for 2055
Pat. Lit. and written out, Globe, and ditto, under Suit, and the figures $11,700.00, and the line adding the two, showing the $15,000.00.

Now, those we have selected at random over a period of eleven or twelve years. One of them is about the time, within a few months of the time of Exhibit 11, and if you want us to look some further, we will. We have no doubt we can find plenty of them.

From these I draw the conclusion that the Accounting Department, as has been testified, puts these things on as a matter of information and convenience for

2056 *Colloquy*

itself, and that there is no hard and fast rule which cannot be deviated from.

May I mark for identification——

Mr. von Holst: I would like to offer these in evidence.

Mr. Harris: Well, let me identify them, first. I would like to mark for identification as Universal Exhibit, whatever the next number is, Mr. Reporter, for identification the first sheaf of documents which I have described, where the requisition is dated January 2nd, 1929; as Universal Exhibit blank for identification
2057 the second sheaf of papers described by me, where the voucher requisition is dated January 4, 1936; and as Universal Exhibit blank for identification the third sheaf of papers, where the voucher requisition is dated May 15, 1940.

(Voucher records for payment of $10,000.00 to Thomas G. Haight, including requisition dated January 2nd, 1929, receipt dated Jan. 4, 1929, from T. G. Haight to Universal Oil Products Co., authorization dated Dec. 26, 1928, by H. J. H., and distribution sheet showing payment of 1-2-29 to Thos. G. Haight of $10,000.00 and accounting entries,
2058 were marked Universal Exhibit 9 for Ident., EGR.)

(Voucher records for payment of $5,000.00 to Hugh M. Morris, including requisition dated Jan. 4, 1936, and distribution sheet showing payment of 1/4/36 to Hugh M. Morris of $5,000.00 and accounting entries, were marked Universal Exhibit 10 for Ident., EGR.)

(Voucher records for payment of $15,000.00 to Thomas G. Haight, including requisition dated May 15, 1940, and distribution sheet showing payment of 5/15/40 to Thomas G. Haight of $15,000.00

and accounting entries, were marked Universal Exhibit 11 for Ident., EGR.)

By Mr. von Holst:

Q. Referring to Universal Exhibit 10 for identification, do you know whose handwriting that voucher requisition is? A. Yes.

Q. Whose? A. Mr. Lenske's.

Q. All of it except the approval initials? A. This "42-H" might not be his, but I don't know who put it on; he didn't know the number, so he just put "Reserve for Legal Bills". 2060
With the exception of that, everything is his writing.

The Master: I didn't quite hear your answer.

The Witness: What did you say, Your Honor?

The Master: I didn't understand what you said.

Mr. von Holst: Just read the last answer of the witness.

(The answer was repeated as follows:

"A. This 42-H might not be his, but I don't know who put it on; he didn't know the number, so he just put 'Reserve for Legal Bills'. With the exception of that, everything is his writing.") 2061

By Mr. von Holst:

Q. Referring to Universal Exhibit 10 for identification, it is true, is it not, that the distribution on the reverse side of the voucher does not show anything but 42-H? A. That is right.

Q. It does not show the Root case? A. That is right.

Q. Now, in 1935 and 1936 wasn't that the usual practice, that is, that the voucher distribution only contained the accounting data and did not have any identifying material? A. No, there was no regular rule on the distribution.

Q. Did you yourself look for the distribution records to find out whether there were any others which showed the identity of the suit on the distribution record itself? Did you conduct that search? A. Yes, I looked for some.

Q. Did you find any in 1936 other than Amici Exhibit 13 where the distribution record showed the identity of the suit? A. Yes, I believe there was one or two in '36 besides this.

Q. Will you produce them? A. I don't recall now if it was '36, but——

2063 Mr. Harris: Well, we have got a lot of them. While we don' want to show them to you, we will show them to the Master. There, for instance, is one (indicating).

The Master: Now, what is the exact point you are now making?

Mr. von Holst: I want to see whether there are any distribution records in 1936 which contain the identity of the suit on the distribution record,——

Mr. Harris: Of the legal matter.

Mr. von Holst: —other than this Amici Exhibit 13.

The Master: You mean anywhere on the distribution record?

2064 Mr. Harris: He means on this——

The Master: You mean on the——

Mr. Harris: —distribution sheet, so-called.

The Master: —sheet headed "Distribution"?

Mr. Harris: Yes.

The Master: At the top.

Mr. Harris: That is right. On the sheet corresponding to Exhibit 13, that is what you mean?

Mr. von Holst: Yes.

Mr. Harris: All right. Well, I am going to show the Master some of them, and here is one that I show the Master in confidence, dated February 20, 1936,

which showed fifteen different legal matters covered by that voucher, shown on the distribution sheet.

I show the Master another one——

Mr. von Holst: Just a moment, Mr. Harris, are those charges to 42-H,——

Mr. Harris: No.

Mr. von Holst: —on that voucher?

Mr. Harris: No.

Mr. von Holst: What are they charged to?

Mr. Harris: They are charges to 82-A, which is United States Patents, 16-B, Infringement Suits, 17-B, Interference, 18-B, Opposition, and 80-B, General Legal, 2066

The Master: Some of them I note are 16 and 17, without the letter B. Is that meant to be repeated, as a 16-B?

Mr. Harris: Oh, I suppose so.

By Mr. Harris:

Q. Is there such an account as 16, rather than 16-B? 16-B and 16 are the same, are they? A. Yes.

Mr. Harris: And you notice that some of them are litigation; for instance, there is charged to 16 U. O. P. v. Mid Continent, 16, U. O. P. v. Crew Levick, 16, 2067 U. O. P. v. Empire Refining, 16, U. O. P. v. Cities Service, 16, U. O. P. v. Skelly, to mention some of the litigation.

Mr. von Holst: Do the amounts appear opposite each case?

Mr. Harris: Yes, yes, each amount is separate.

The Master: Yes, it would appear that there are charges——

Mr. Harris: On the distribution sheet.

The Master: —to different suits and different accounts.

Mr. Harris: Shown on the distribution sheet.

The Master: Shown on the distribution sheet, as per bills attached to the voucher.

Mr. Harris: That is right, and although many of them were charged to the same account, nevertheless, the various matters are set forth separately.

The Master: Yes.

Mr. Harris: Is that correct?

The Master: Yes.

Mr. Harris: I show you another one, dated July 17, 1936, wherein there are listed ten different legal matters, each separately listed on the distribution sheet, and the amount of the fee in each one separately stated, and those are to accounts such as 82-A, 16, 17, 88-K, 50-J, and some of them, those that are charged to 16, are such suits as U. O. P. v. Root, U. O. P. v. Empire, U. O. P. v. Drew-Leyick, U. O. P. v. National Refining.

Mr. von Holst: And none of those accounts charged are 42-H,——

Mr. Harris: No.

Mr. von Holst: —Reserve for Legal Bills?

Mr. Harris: No, they weren't big enough. Now, here is another one. These were just the ordinary monthly bills.

Mr. Thiess: May I ask, when you say they aren't big enough, what is the highest amount that was charged?

Mr. Harris: Let's see, I think it was $250., on one of these $457.16, that is the largest single bill.

Mr. von Holst: I would like to call the Master's attention to the fact that Universal Exhibit 10 for identification is for $5,000.00, and is charged to 42-H.

Mr. Harris: There are none here of that size. That was Judge Haight's bill, wasn't it, or Judge Morris's?

Mr. von Holst: Yes.

Mr. Harris: Well, there is testimony to the effect that that account was particularly devised to take care of the Root case and some of the special counsel in the Root case.

The Master: May I ask the witness——

Mr. von Holst: I also call the Master's attention to the fact that Universal Exhibit 9 for identification, the payment to Thomas G. Haight, for $10,000.00, is charged to 30, Infringement, not to 42-H.

Mr. Harris: What is that?

Mr. von Holst: In Texas v. Warner Quinlan. 2072

Mr. Behrens: That is before the Reserve existed.

Mr. Harris: That is before the Reserve was ever created, 1929.

(Discussion off the record.)

the Master:

Q. Mr. Lindahl, what were these entries on the distribution sheet used for after they were made? Did you post m anywhere? A. Yes.

Q. Where? A. We kept a subsidiary ledger, we tried to proximate the cost of each suit, to be available for infor- 2073
tion, if any of the officers would ask. That was all that s for.

Q. They were posted, then, from the distribution sheet o some account so that you could afterwards determine cost of each suit? A. Yes.

Mr. Harris: That was not the general ledger, you understand, Your Honor, which carried the financial accounts, but only a matter of segregating the cost of various suits.

Mr. von Holst: I would like to ask the witness——

2074 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

By Mr. von Holst:

Q. Did you have subsidiary accounts in 42-H? A. No.

Q. In other words, if an item on the distribution record were charged to 42-H, that is where it would go? A. That is where it would stay.

Q. There would be no further posting—— A. No, sir.

Q. —of the amount so charged. A. No, sir.

Mr. Harris: We have others here if you want some more.

2075 *By Mr. von Holst:*

Q. So that all you would need on any distribution sheet where the amount was to be charged to 42-H would be just that legend, wouldn't it, 42-H? A. That is all you need for the voucher.

Q. And any further material or information would be unnecessary, isn't that right? A. No, you would have to have the information if you ever wanted to detail the charges to that reserve.

Q. Wouldn't you find that on the reverse side of the distribution sheet? A. Yes.

Q. And the distribution sheet, as I understand it, Mr.
2076 Lenske—and correct me if I am wrong in my understanding—was just for the aid of the accountants in posting the item to the proper account?

Mr. Harris: No.

By Mr. von Holst:

Q. Isn't that right.

Mr. Neuman: Let him answer, Mr. Harris.

A. No.

Mr. Harris: It is not what he said.

The Witness: You mean aid to whom?

By Mr. von Holst:

Q. Whoever does the posting to the account that is to be charged. A. Well, let me explain that. When this is entered in the voucher register——

By Mr. Harris:

Q. When what is entered in the voucher register? A. This Exhibit 13—it is charged to 42-H, Reserve for legal bills, in the voucher register. That is for the voucher clerk's information.

2078

Mr. von Holst: Yes.

The Witness: And that is what goes into the Reserve for Legal Bills as a charge, and when we itemize it, if we want to at any particular time, we get this information for our own personal use, if we ever want it.

By Mr. Harris:

Q. The information shown on Exhibit 13? A. Yes, it can be on there, or it can be on Exhibit 11, either one of the two.

2079

By Mr. von Holst:

Q. Well, now, referring to Amici Exhibit 27, for instance, here is a December payment to Kaufman, and all that the distribution sheet shows is the account of that, 42-F, Reserve for Legal Bills. A. That is right.

Q. And that is all that is necessary, is it not? A. That is right.

Mr. Harris: That was one, Mr. von Holst, that was not charged to any particular case, wasn't it? Wasn't that one of the latter payments?

Mr. von Holst: Yes, that is true.

2080 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

By Mr. von Holst:

Q. Very well, then, I will show you, then, I show you Amici Exhibit 6 and also Amici Exhibit 4, and it is a fact that Amici Exhibit 6 is the distribution of Amici Exhibit 4? A. That is right.

Q. Now, Amici Exhibit 4 identifies the suit following the legend "On account of", does it not? A. That is right.

Q. As the Root case? A. That is right.

Q. And the distribution record for that same payment, Amici Exhibit 6, does not say anything about the case, does
2081 it? A. That is right, Exhibit——

Mr. Harris: 4.

A. —4, if you follow the "Charge to", there is nothing on that particular line referring to the Root case. Therefore, she wouldn't put it on here (indicating).

By Mr. Harris:

Q. On Exhibit 6? A. Yes.

Q. "She", you mean the girl accountant? A. I am talking about the girl who writes the voucher.

(Discussion off the record.)

2082

Mr. von Holst: I would like to offer in evidence, as Amici Exhibit 62 the two sheets which are stapled together, previously identified as Universal Exhibit 10 for identification, and I offer in evidence as Amici Exhibit 63 the papers previously identified as Universal Exhibit 11 for identification, and I offer in evidence as Amici Exhibit 64 the papers previously identified as Universal Exhibit 9 for identification.

Mr. Harris: Well, wait, may we have those photostated and put in the record? They come out of our original records.

The Master: Very good, or Mr. Rodebaugh will do it.

Mr. Harris: Mr. Rodebaugh will do it, that is all right.

The Master: Yes, have them photostated.

Mr. Thiess: And put in the record at the same time, the same as before.

(Voucher records for payment of $5,000.00 to Hugh M. Morris, including requisition dated Jan. 4, 1936, and distribution sheet showing payment of 1/4/36 to Hugh M. Morris of $5,000.00 and accounting entries, previously marked Universal Exhibit 10 for Identification, was marked Amici Exhibit 62.) 2084

(Voucher records for payment of $15,000.00 to Thomas G. Haight, including requisition dated May 15, 1940, and distribution sheet showing payment of 5/15/40 to Thomas G. Haight of $15,000.00 and accounting entries, previously marked Universal Exhibit 11 for identification, was marked Amici Exhibit 63.)

(Voucher records for payment of $10,000.00 to Thomas G. Haight, including requisition dated January 2nd, 1929, receipt dated Jan. 4, 1929, from T. G. Haight to Universal Oil Products Co., authorization dated Dec. 26, 1928, by H. J. H., and distribution sheet showing payment of 1-2-29 to Thos. G. Haight of $10,000.00 and accounting entries, previously marked Universal Exhibit 9 for identification, was marked Amici Exhibit 64.) 2085

By Mr. von Holst:

Q. Referring to Amici Exhibit 11, where did you get that date for the filing of the Crew-Levick case as being February 20, 1936? A. I don't know.

Q. Do I understand that your best recollection is that you wrote "U. O. P. vs. Crew-Levick Eq. suit filed 2/20/36" on Amici Exhibit 11 before the approval signatures or initials were indicated thereon? A. Yes, sir.

Mr. Harris: Well, that has been answered twice, but if you want him to answer it again, it is all right.

The Master: He said, "Yes".

Mr. Thiess: Yes, he said, "Yes".

By Mr. von Holst:

2087

Q. Isn't it rather obvious that the legend that I just called your attention to is written small to escape the flourish of the signature initial appearing upon the second approval line? A. No, not necessarily.

Q. If you had written that U. O. P. v. Crew-Levick Equity suit, and the date before those signatures were put on, on the approval lines or approved lines, wouldn't you have carried it along further? A. No, that was just the end of the——

Mr. Harris: That is assuming that he put it on afterwards. He has testified that he did not put it on afterwards.

2088

Mr. von Holst: Let me interrogate the witness.

Mr. Harris: Well, I object to it.

A. If I started where I did, I couldn't have gone farther.

By Mr. von Holst:

Q. If you hadn't had any signatures to stop short of you could have gone farther, couldn't you?

Mr. Harris: Just a minute, I object to this.

The Master: Oh, I think that is all right.

Mr. Harris: Just a minute, Mr. White, the witness has testified it was not put on after the signatures were put on. Now, this man says, if it had been put on after the signatures were there, which assumes a state of facts which the witness has denied.

The Master: Well, I know, but I think he is endeavoring to determine from his examination whether the witness is accurate.

Mr. Harris: Well, the witness cannot answer the question. He has said that he did not put it on after the signatures were on, so you assume by a hypothesis 2090
a state of facts which the witness says does not exist. Now, if he says, if it had been put on, if it had been put on before the signatures were there, wouldn't it have been so and so, that is all right.

The Master: Well, it bears on the question as to whether his recollection is accurate as to when he did put it on, I think. Of course, these witnesses are considered as under cross-examination, they are Universal employees. I think the examination is all right.

Mr. Harris: Oh, I am not objecting to their asking leading questions as probing a man's recollection, 2091
they are entitled to that.

By Mr. von Holst:

Q. Have you the question in mind? A. No.

Mr. Harris: It is like, "When did you stop beating your wife?"

Mr. von Holst: Read the question, please.

(The question was repeated by the reporter as follows:

2092 *William Lindahl—For Amici Curiae—(Recalled)—Direct*

"Q. If you hadn't had any signatures to stop short of you could have gone farther, couldn't you?")

A. Well, it appears to me that this U. O. P. v. Crew-Levick doesn't interfere with any signatures, because my name sits considerably lower than the 1936.

By Mr. von Holst:

Q. But, Mr. Lindahl, may I call your attention to the fact, I realize that it doesn't appear clearly in the photo-
2093 stat, but on the second signature line there is an initial. Isn't it Mr. Carter's initial? A. That is right.

Q. And there is a line that comes clear around on top, is there not? A. Well, that is right through there, I can follow it right through there, there it is, right there (indicating).

Q. Yes. A. Doesn't even touch the other.

Mr. Harris: Maybe Mr. Carter put his signature there so it wouldn't interfere with the legend; just as well as the other.

The Master: Either inference can be drawn, of course.

2094 Mr. Harris: It would be so much better if we had the original.

The Master: Yes, it would.

Mr. von Holst: I will agree to that.

The Witness: Yes.

Mr. von Holst: It is very hard to examine him along this line from the photostat.

Mr. Harris: That is right.

The Master: Well, it is mainly argument, Mr. von Holst.

Mr. von Holst: Yes, I think so.

The Master: When we get the original we can put it in evidence.

William Lindahl—For Amici Curiae—(Recalled)—Direct 2095

By Mr. von Holst:

Q. I show you Amici Exhibit 37. Is that or any part of it in your handwriting? A. Yes, the first three are mine.

Q. Now, you say the first three,—— A. The first three entries here (indicating).

Q. Suppose you just read into the record, Mr. Lindahl, everything on that exhibit which is in your handwriting. A. 1935, October 18, U-10095, $25,000.00. 1936, March 18, U 3120, $10,000.00. July, this "27" looks like it might be Mr. Lenske's, U-7203, $5,000.00.

2096

By Mr. Harris:

Q. Well, aside from the 27, it is your handwriting? A. It looks like evidently Mr. Lenske has put some other date in there—whether I left the date out, or—it looks very much like his 27.

By Mr. von Holst:

Q. And is that all on that memorandum that appears in your handwriting? A. That appears to be all.

Mr. Harris: Those dollar signs all seem to be made by the same person. 2097

The Witness: Those were made by Mr. Lenske.

Mr. Harris: Oh, I see.

By Mr. von Holst:

Q. And that last entry, December 2nd, U-12005, $10,000.00, is that Mr. Lenske's? A. That seems to be Mr. Lenske's entry, yes, sir.

Q. And the total of $50,000.00? A. That is his.

Q. Where did you get the figures from, Mr. Lindahl, that appear on that Exhibit 37? A. I got them from the index record, the record of the vouchers.

Q. Who told you to prepare that pencil memorandum? A. Mr. Lenske.

Q. And what did he say to you at the time, if you recall? A. Well, I think he just says, "Make me up a memorandum of the payments to Mr. Kaufman."

Q. That is, all payments that had been made to him——

A. Yes, sir.

Q. —as of that date? A. Yes, sir.

Q. Did Mr. Lenske tell you who had requested this pencil memorandum? A. I can't say that offhand, no.

2099 Q. Do you recall anything that he said to you about it, other than what you have stated? A. No, I don't.

Q. Now, I show you Amici Exhibit 25 and also the original requisition for voucher of which Amici Exhibit 25 is a photostat. Is this requisition in your handwriting at all? A. No, sir.

Q. Whose handwriting is it, if you know? A. That is Mr. Lenske's handwriting.

Q. And including this legend, 42-F, Reserve for Legal bills? A. No, that is mine.

Q. Oh, and that legend, 42-F, Reserve for Legal bills, is in pencil on the original, is it not? A. That is right.

Q. And that is in your handwriting? A. That is right.

2100 Q. Did you put that on after Mr. Lenske drew the requisition? A. Well, he evidently drew this requisition and gave it to me, and I put that 42-F Reserve for Legal bills, on there, and this JB initial, which goes over my "Reserve for Legal bills" is put on there before the check is written.

Q. Whose initials are they? A. That is Jessie Baxter. She was the clerk that verified all the expenses and invoices and expense accounts, and she initialled almost every voucher.

Q. And this legend down at the bottom, "Mail with letter to Healy at New York office", that is in Mr. Lenske's writing, is it? A. That is Mr. Lenske's writing.

Mr. von Holst: May the record show that everything on Amici Exhibit 25 is in ink except the writing which the witness called attention to as being in pencil,——

Mr. Harris: Well, that isn't quite accurate.

Mr. von Holst: —and—you didn't give me a chance to finish.

Mr. Harris: Oh, I never know when you are going to finish.

The Master: And what?

Mr. von Holst: The initials which also are in pencil, is that right, Jessie Baxter? 2102

Mr. Harris: And M. C.

Mr. von Holst: And M. C.

By Mr. von Holst:

Q. Is that right, Mr. Lindahl? A. Let me see it——

Q. To clear it up, just state everything that appears in pencil on that exhibit. A. That is right.

Q. Was my statement correct? A. Yes, sir.

Q. All right. Now, referring again to Amici Exhibit 25, who gave you authority to charge that item to 42-F, Reserve for Legal Bills? A. New York office.

Q. I understand you to say that the authority to charge 2103
that account of 42-H, Reserve for Legal Bills, always came from New York, is that right? A. Yes, sir.

Q. And how would that authority be given, in writing or over the telephone? A. No, that was orally, over the telephone.

Q. You would call up New York? A. No, they call here; it says here, per telephone conversation with Mr. Healy.

Q. I refer you to Amici Exhibit 4, voucher requisition for $25,000.00, Amici Exhibit 17, voucher requisition for $5,000.00, Amici Exhibit 11, voucher requisition for $10,000.00, and Amici Exhibit 25, voucher requisition for

$10,000.00. Now, looking at those four, it is a fact, is it not, that Amici Exhibit 25, voucher requisition dated December 2nd, 1936, has a line stricken through the words on the form, "Total advance", at the bottom of the page? A. Yes.

Q. And that there is no such line struck through on Amici Exhibits 4, 17 and 11? A. That is right.

Q. Why is that? A. That "Total Advance" is—it is just a thing that is put on these, these are mimeographed forms, and we use that only for traveling men. You see, we have a number of men who are out servicing and operating plants, and when they go out of town, for the convenience of the
2105 officers who sign these checks, I show the total advance of that employee. If he has got one hundred dollars, or two hundred and fifty, or three hundred dollars, that is only for their information. That has nothing to do with a case of Mr. Kaufman or anybody else in our legal staff of attorneys.

By Mr. Harris:

Q. Never filled out? A. Never filled, no, sir, it only applies to our individual employees who are on a traveling expense account.

By Mr. von Holst:

2106 Q. Well, now, what I want to know is why on Amici Exhibit 25 there is a line drawn through "Total Advance", whereas there is not on any of the others to which I called your attention. Does that indicate to you that Amici Exhibit 25 was the last payment to be made to Mr. Kaufman? A. No, that crossing out is meaningless.

Mr. Harris: I do point out, Mr. von Holst, that the three which are not crossed out are prepared in the handwriting of Mr. Lindahl, and the one which is crossed out was prepared in the handwriting of Mr. Lenske.

Mr. von Holst: I think that is all the direct.

Mr. Harris: All right, sir, I have just a couple of questions, I think.

Cross Examination by Mr. Harris:

Q. Mr. Lindahl, you are the chief accountant and cashier of the company, are you not? A. Yes, sir.

Q. Among other things, you keep the cash book? A. Yes. sir.

Q. Yourself? A. Yes, sir.

Q. I notice your initials on a number of these vouchers, 2108
indicating they had been posted to the cash book? A. That is right.

Q. And Mr. Lenske is the comptroller of the company? A. Yes, sir.

Q. And he is your superior? A. Yes, sir.

Q. And your desks are very close together, aren't they, out there? A. Yes, sir.

Q. So close, indeed, that you can call back and forth to each other? A. Yes, sir.

Q. I suppose you do sometimes? A. Yes, sir.

Q. Now, referring to these various requisitions for checks or vouchers, do you have a perforation stamp that goes on 2109
those,—— A. Yes, sir.

Q. —indicating payment by check? A. Yes, sir.

Q. And that has been shown on some of the originals of these requisitions which have been shown here? A. Yes, sir.

Q. And it does not show up so clearly on the photostats,—— A. Yes, sir.

Q. —is that right? Now, when is that perforation stamp put on the requisition? A. That is put on when the check is mailed.

Q. On the same day? A. The same day.

Q. Are there ever any exceptions? A. Well, once in a while you may have a few where they are put on the next

morning, but that is very far and few, but never later than next morning.

Q. And why would it ever be the next morning? A. Well, because the officers sometimes are delayed in signing checks, and we have a number of checks every day and there is considerable time in writing up the envelopes and mailing them out, and they don't want to keep the girls there too long after closing hours, and, therefore, the——

Q. On account of overtime? A. Under my supervision and my assistant there, we put a rubber band around them, and first thing the next morning they are taken out and
2111 perforated.

Q. And so the requisition is perforated, "Paid", either at the time the check is prepared and sent out, or in any event not later than the next morning? A. That is right.

Q. And that is the regular and universal practice of your company? A. Yes, sir.

Q. Now, another thing, on these requisitions of which Exhibit 11 is an example, the last legend is "Charge to", and usually there is an account—there is always an account mentioned under that legend, that is right, isn't it? A. Yes, sir.

Q. Now, do you make up that account out of your own head? A. No, sir.

2112 Q. Do you accept the word of any casual employee? A. No, sir.

Q. Do you insist on getting your information from some responsible officer or employee of the company? A. Yes, sir.

Q. Of course, if Mr. Mitchell tells you Mr. Halle has telephoned about it, you take his word for it, don't you? A. Yes, sir.

Q. You would take Mr. Mitchell's own authority for it, wouldn't you? A. Yes, sir.

Q. If Mr. Lenske says Mr. Healy has called, or Mr. Behrens has called and passed on Mr. Halle's instructions, you would take that, wouldn t you? A. Yes, sir.

Q. But you wouldn't ever have that filled out, as I understand it, without authority from one of the officers or high employees in the management of the company? A. Yes, sir.

Q. And it is not a matter of imagination or guess with you? A. No, sir.

Q. You would never put charge to 42-H, Reserve for Legal Bills, just because you thought it might belong there? A. No, sir.

Q. And you did have authority for each one of those entries in these requisitions? A. Yes, sir.

Q. And you accept that authority and exercise no discretion on your own in that respect? A. Yes, sir. 2114

Q. All right. Now, will you refer to Exhibits 11 and 13, for a moment, merely as illustrative? Now, referring to Exhibit 13 for a moment, I see—or, tell me, is that prepared after Exhibit 11 is prepared? A. Yes, sir.

Q. And where is the information which is put on the distribution, "Account", "Amount", "Totals", derived from? A. Exhibit 11.

Q. From Exhibit 11, and what part of Exhibit 11? A. Line "Charge to" and below it.

Q. And is Exhibit 13—and by 13 I mean the distribution sheet, in every case I am taking that merely as an illustrative case—is Exhibit 13 prepared by a stenographer? A. 2115
Yes, sir.

Q. Does she exercise any discretion or does she follow slavishly the instructions? A. She follows instructions.

Q. And what are her instructions as to what to put on Exhibit 13, under "Distribution", "Account", "Amount", and "Totals"? A. Well, she is told to put there whatever shows on 11.

Q. I see, and any part of 11, any particular part of 11? A. Well, "Charge to", that part, "Charge to".

Q. I see, so that in the normal course Exhibit 13, under "Distribution", "Account", "Amount" and "Totals" will be

an exact copy of what occurs on Exhibit 11 under "Charge to"? A. Yes, sir.

Q. Now, was your custom, the custom which you have described, relative to putting on a "Paid" perforation stamp on requisitions in vogue on March 18, 1936? A. Yes, sir.

Mr. Harris: That is all.

Redirect Examination by Mr. von Holst:

Q. Do you have to get authority from New York to make
2117 charges to all the accounts? A. Yes, sir.

Q. Would you say that was not just 42-H and 42-F? A. No, they have jurisdiction for all accounts.

Q. Well, if you were going to charge to an account a lawyer's bill that came in or was transmitted to you,—— A. Yes, sir.

Q. —you were going to charge Infringement,—— A. Yes, sir.

Q. —you would have to get authority for that from New York, would you? A. Well, if the bill designated the suit —which in many cases they do—and Mr. Halle's approval is on there, he has approved the amount on the suit.

2118 Q. Yes, that is, if the bill would contain Mr. Halle's initial,—— A. That is right.

Q. —then you would go right ahead and pay it and post it? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Of course, what you have referred to in your cross examination applies to legal bills, isn't that so? That is to say, you don't have to get authority from New York for approving a stationery bill,—— A. Oh, no.

Q. —or something like that? A. No.

Mr. von Holst: That is all.

William Lindahl—For Amici Curiae—(Recalled)—Redirect 2119

By the Master:

Q. Mr. Lindahl, the purpose of the transmission letter which is attached to the voucher—you call it the voucher jacket, the whole thing, don't you? A. Yes, sir

Q. —is to inform the payee that the check is being sent? A. Yes, sir.

Q. And the purpose for which it is being sent? A. Yes, sir.

Q. Who writes the transmission letter, you, or a stenographer? A. No, the stenographer writes that.

Q. Where does she get her information? A. From Exhibit 11. 2120

By Mr. von Holst:

Q. That is, from the voucher requisition? A. Yes, sir.

By the Master:

Q. Well, I notice that in Exhibit 12, the transmission letter, the information is not the same as is contained in Exhibit 11, the voucher. How do you explain that?

(The witness examined the exhibits.)

2121

Mr. Harris: It seems to me to be the same.

The Master: The transmission letter does not mention the case.

Mr. Harris: I know, but this is what the girl copied.

A. Maybe I can explain that, Your Honor. The lines above the line with "Charge to" are the only three lines which will be included in the transmittal remittance. That line where it says "Charge to", that refers only to the distribution, that does not appear on the transmittal.

2122 *William Lindahl—For Amici Curiae—(Recalled)—Redirect*

By Mr. Harris:

Q. And that is true in each and every case? A. Yes, sir.

By the Master:

Q. Well, what occurred to me is that the voucher seems to indicate that this work was done in connection with a particular case, whereas the transmittal letter does not mention that case. A. That is right, we just mention pending litigation.

2123 *By Mr. von Holst:*

Q. That is why, Mr. Lindahl, isn't it, that normally the case, the name of the case or the identification of the case would appear following "On Account Of", in order that the payee of the check would have that information? A. No, not necessarily. Mr. Healy might say, "Mr. Lenske sent a check down for retainer in connection with pending litigation."

Mr. Harris: Well, I do call attention to the fact that the transmittal letter contains the language in Exhibit 11 under the heading "On Account Of",——

The Master: Yes.

2124 Mr. Harris: ——and that that is broader in scope than the precise matter to which this was charged, that that would be broad enough to include not only services in Crew Levick, but any other services rendered or to be rendered. In other words, it appears to have been, according to Mr. Halle's testimony, his desire every time he paid these lawyers to be sure that he was getting as broad a coverage as possible.

The Master: Anything further from this witness?

Mr. Thiess: I don't think so.

Mr. Harris: I have one or two things.

Recross Examination by Mr. Harris:

Q. I call your attention to Exhibit 4, which is the original twenty-five thousand dollar payment to Mr. Kaufman, and I note there that the initials under "Approved", the second "Approved", are the initials of Mr. John J. Mitchell. A. Yes, sir.

Q. So your authority for drawing up that payment was from Mr. Mitchell? A. Yes, sir.

Q. As appears from the body—— A. Yes, sir.

Q. —of the requisition itself? A. Yes, sir.

Q. Now, Mr. Mitchell also signed the check, I believe, if 2126
you will turn to Exhibit 7, covering this twenty-five thousand dollar payment.

Mr. Harris: Well, it appears——

Mr. Neuman: Just a minute, here it is.

(Amici Exhibit 7 was shown to the witness.)

By Mr. Harris:

Q. Is that right? A. Mr. Mitchell signed the check, yes, sir.

Q. Now, turning to 11; your authority there was from Mr. Lenske, was it not? A. Yes, sir.

Q. And so he has initialed his approval of that payment 2127
and charge? A. Yes, sir.

Mr. Harris: Now, Your Honor, I have just a few other documents to call attention to while this witness is on the stand. They are produced from the files of the company.

The Master: Before you present them, may I just ask you if there are any other cases in which the precise description of the litigation for which the check was sent, covered in the voucher, is not included in the transmission letter?

2128

Mr. Harris: Oh, yes, I think in all of them where —I called your attention to the fact that Judge Haight's bill of November 15, 1935, of $75000.00, in which the balance paid was $55000.00, and disbursements, on the letter of transmittal all that is contained is, "Services and Expenses from May 1930 thru Oct. 21, 1935".

Mr. Thiess: But that is something that was sent in answer to a bill rendered. Now, is there——

Mr. Harris: That is true.

Mr. Thiess: Is there anywhere where there was

2129

no bill rendered where the particular case to which the services are charged is not shown?

Mr. Harris: I think we can find some.

The Master: I think it might be helpful.

Mr. Harris: We haven't looked for that purpose, because it has no significance, but if it appears to have, to anyone, we will look them up.

Mr. Behrens: There is one, right there (indicating).

Mr. Harris: There is one, for example, a payment of $18000.00 to Judge Haight, pursuant to a requisition of February 18, 1941, where in the requisition,

2130

"On Account Of", it simply says:

> "To apply on account of Judge Haight re services per phone conversation of Mr. Healy and Lenske."

On the letter of transmission it says the same thing:

> "To apply on account of Judge Haight re: Services per phone conversation of Mr. Healy and Lenske."

Whereas, under "Charge To" there appears "42-H, Reserve for Litigation Expense. Globe Oil, Ill."

I think you can find anything you want in these vouchers, either way, and I wanted to ask Mr. Lindahl that.

By Mr. Harris:

Q. Is there such a hard and fast rule with reference to what goes on, what is put in the requisition under the two headings, "On account of", and "Charge to" that any deviation from it is unusual? A. No, there is no rule for that.

Q. And that is a matter—you put the information that you get in there pursuant, as you have testified, to authority 2132
from some responsible officer? A. That is right.

Q. But the amount of information that you put in is a matter of convenience for the Accounting Department? A. That is all.

By Mr. von Holst:

Q. But the stenographer that writes up the transmittal slip has no authority, you testified,——

Mr. Harris: That is right.

By Mr. von Holst:

Q. —and no discretion, but must copy what follows 2133
the words "Charge to".

Mr. Harris: No.

A. No.

By Mr. von Holst:

Q. —what follows the words "On account of" in the voucher requisition?

Mr. Harris: Right

A. Right.

2134 *William Lindahl—For Amici Curiae—(Recalled)—Recross*

By Mr. von Holst:

Q. Correct? A. That is right, correct.

The Master: This voucher, of course, does identify it by the conversation, but not otherwise.

Mr. Harris: All of these were pursuant to conversation, these payments to Kaufman were all pursuant to telephonic conversation, as the testimony and the evidence shows.

Now, while we have the witness here, there has been some point made at the Chicago hearing of the
2135 fact that Chicago asked Mr. Kaufman concerning one or more checks directed to him, to acknowledge receipt to New York and send a copy of that acknowledgment to Chicago. That is not unusual; and I will just give you a few examples of it.

For example, here is a letter, here, for instance, is a copy of a letter from Chicago, dated November 26, 1934, to Judge Haight, enclosing a check for $10,414.49, the last paragraph of which is:

> Will you please acknowledge safe receipt of the enclosed check to Mr. Halle at our New York office, with a copy of same to us at Chicago.

2136 Here is one to Mr. R. R. Brewster, Kansas City, Missouri, dated November 26, 1935, enclosing a check for $6,129.55, in which the last paragraph is as follows:

> It will be appreciated if you will acknowledge safe receipt of this remittance to our New York office and send a copy of same to Chicago.

And we might multiply those instances, unless counsel on the other side and the Master feel that that is sufficient illustration.

Now, there are requests——

Mr. von Holst: Mr. Harris,——

Mr. Harris: Yes.

Mr. von Holst: —those two letters that you just referred to, do they identify the law suit in which the amount is being paid?

Mr. Harris: Yes, the one to Judge Haight identifies three law suits, and the one to Mr. Brewster identifies five. The one to Mr. Brewster says, "Covering services rendered and to be rendered in the infringement cases filed against"—naming five companies.

Then it is not unusual to request receipts, as Mr. 2138
Halle did. Here is a letter to Judge Haight himself, from Chicago, dated March 2nd, 1934—rather, to Judge Haight's law firm, for the attention of Judge Haight,——

The Master: Yes.

Mr. Harris: —enclosing $15,000.00 on account of services in the Root case, which is being sent at the request of Mr. Halle, without a bill, and the last paragraph is as follows:

> Will you please be good enough to send us a receipt at your convenience?

We can multiply these. Now, there were some re- 2139
quests from Mr. Lindahl or Mr. Lenske to Mr. Behrens, when they sent checks to be delivered to Mr. Kaufman to acknowledge receipt of them.

Mr. von Holst: Mr. Harris, before you proceed, were those letters written by Mr. Lenske that you referred to?

Mr. Harris: The ones I have already referred to were written by Mr. Lenske. This was written by Mr. Lindahl, June 8, 1933, to Mr. W. M. Behrens from Mr. A. W. Lindahl, that is, to the New York office from the Chicago:

2140

In compliance with your request dated June 5th to Mr. Lenske we are enclosing herewith our check 2728 for $7500.00 in favor of Hugh M. Morris, in payment of services rendered by him in U. O. P. Company vs. Root Refining Company. (No bill apparently) Will you be kind enough to acknowledge the safe receipt of this remittance—and so on.

The Master: Well, that would seem to be the normal practice.

2141

Mr. Harris: Yes, I think that would be normal practice. That is all.

The Master: Is that all, now, with this witness? Have you another witness?

Mr. von Holst: Not until Mr. Lord comes.

Mr. Thiess: No, but I think it might be well—I understand you gentlemen want to get away as soon as we can this afternoon, and possibly we could use this time from now until one o'clock. I would like to put in these letters which you have produced, bills from Mr. Haight's firm.

2142

Mr. Harris: They are there.

The Master: By the way, I had one of these original vouchers here a minute ago. Did somebody pick it up? I would like to get all those not offered in evidence back again.

Mr. Harris: Just one more matter which I should call to your attention; that is a memorandum with reference to one of the payments to Mr. Kaufman; this has been authorized but please don't send check until you hear further, you recall.

The Master: Yes, I remember that.

Mr. Harris: Well, that happened in the case of Judge Haight, too. On November 26, 1935, Mr. Behrens wrote to Mr. Lenske:

> We are sending you herewith Judge Haight's bill for services in the Root case, on which you will note there is a balance of $55,644.59, payment of which has been approved by Mr. Halle. You may send a check to Judge Haight now for $644.59, representing his disbursements, but no payment should be made on account of the principal until you receive further advice from here. —identical 2144 in substance.

The Master: They were sitting on that bill a little while.

Mr. Harris: Do you see any point in cluttering up the record with that? Would you mind leaving out of the record the amounts of these bills, or do you regard it——

Mr. Thiess: I think it would be well to have those copied.

The Master: You mean the amount of Judge Haight's bills in the Root case?

(Discussion off the record.) 2145

Mr. Harris: They are already in.

Mr. Behrens: Mr. Thiess, Mr. O'Mara would like to keep that last one out.

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 65——

Mr. Harris: These are just the bills, aren't they?

Mr. Thiess: These are the bills.

Mr. Harris: Well, you go right ahead.

Mr. Thiess: —a bill from the firm of Wall, Haight, Carey & Hartpence under date of June 18, 1932, and voucher attached thereto, consisting of three pages.

2146 *Colloquy*

(Bill dated June 18, 1932, from Wall, Haight, Carey and Hartpence, to Universal Oil Products Company in the matter of Universal Oil Products Company v. Cosden Oil Company, LaSalle Petroleum Company, South Texas Gas Company, Globe Oil & Refining Company, Orient Petroleum Company and White Eagle Oil & Refining Company, for $5,000.00, bill dated June 18, 1932, from Wall, Haight, Carey & Hartpence, to Universal Oil Products Company in the matter of Universal Oil
2147 Products Company v. Winkler-Koch Engineering Company and Root Refining Company, for $5000.00, and distribution sheet and accounting record were marked Amici Exhibit No. 65.)

Mr. Thiess: I wish to offer in evidence as Amici Exhibit 66 a voucher and requisition in the amount of $15,000.00, paid to Wall, Haight, Carey and Hartpence.

Mr. McCullough: Mr. Thiess, may it be noted that there is no bill in that one?

Mr. Thiess: Well, it will be obtained from that.

(Voucher requisition dated March 2, 1934, in
2148 favor of Wall, Haight, Carey & Hartpence for $15,000.00, for services in Root case, and distribution sheet and accounting record were marked Amici Exhibit 66.)

Mr. Thiess: Likewise, I want to offer in evidence as Amici Exhibit 67 bill from Wall, Haight, Carey & Hartpence to the Universal Oil Products Company covering the period May 1, 1930 to October 21, 1935, in the amount of $55,000.00, together with voucher for the same attached thereto.

(Bill dated November 15, 1935, from Wall, Haight, Carey & Hartpence to Universal Oil Prod-

2149

nets Company, for services in the matter of Universal Oil Products Company v. Winkler-Koch Engineering Company and Root Refining Company, from May 1, 1930 to October 21, 1935, in the net amount of $55,000.00, and distribution sheet and accounting record, were marked Amici Exhibit 67.)

Mr. Thiess: I offer in evidence as Amici Exhibit No. 68 bills from Wall, Haight, Carey & Hartpence to the Universal Oil Products Company covering Universal vs. Root Petroleum Company, for the period December 10, 1935 to December 9, 1936, which are bills for services of Judge Haight and also cover services rendered by F. W. Schumann from March 27, 1936 to August 19th of that year. Well, this sheaf also contains a bill rendered by the same firm to the Universal Oil Company in the case of Universal versus Black Gold Refining Company, and the voucher covering these two payments.

2150

(Bill dated December 18, 1936, from Wall, Haight, Carey & Hartpence to Universal Oil Products Company, in the matter of Universal Oil Products Company vs. Root Petroleum Company, for $6,620.05, and bill dated December 18, 1936, from Wall, Haight, Carey & Hartpence to Universal Oil Products Company in the matter of Universal Oil Products Company vs. Black Gold Refining Company, for $200.00, and distribution sheet and accounting record were marked Amici Exhibit 68.)

2151

Mr. Thiess: I wish to offer as Amici Exhibit 69 a bill from the same firm to Universal, in the amount of $7,605.26, dated February 2nd, 1938, together with voucher attached.

(Bill dated February 2, 1938, from Wall, Haight, Carey & Hartpence to Universal Oil Products Company, for $7,605.3, and distribution sheet and accounting record, were marked Amici Exhibit 69.)

Mr. Thiess: I offer as Amici Exhibit 70 bill by the same firm to Universal under date of December 9, 1941, in the amount of $2,049.02, covering also a bill to general services for $500.00, a letter from T. G. Haight to Mr. Halle dated December 9, 1941, and another letter from Judge Haight to Halle under the same date, together with vouchers covering the amounts of the bill.

(Letter dated December 9, 1941, from T. G. Haight to Mr. Hiram J. Halle, bill dated December 9, 1941, from Wall, Haight, Carey & Hartpence to Universal Oil Products Company, for $2,049.02, in the matter of Universal Oil Products Company v. Hancock Oil Company, bill dated December 9, 1941, from Wall, Haight, Carey & Hartpence to Universal Oil Products Company, for general services, for $500.00, letter dated December 9, 1941, from T. G. Haight to Mr. Hiram J. Halle, another letter of December 9, 1941, from T. G. Haight to Mr. Hiram J. Halle, and distribution sheet and accounting record were marked Amici Exhibit 70.)

Mr. Thiess: I offer as Amici Exhibit 71 voucher requisition for $18,000.00, together with a voucher attached, to the firm of Wall, Haight, Carey & Hartpence.

Voucher requisition dated February 18, 1941, to Wall, Haight, Carey & Hartpence, for $18,000.00, memorandum dated February 18, 1941, and dis-

tribution sheet and accounting record were marked Amici Exhibit 71.)

Mr. Thiess: I offer in evidence as Amici Exhibit 72 voucher and requisition of $2500.00, paid to H. M. Morris.

Mr. Harris: How does that get in there?

Mr. Thiess: They were given to us.

Mr. Harris: Why do you want to put that in?

The Master: Well, wasn't he one of counsel in the Root case?

Mr. Thiess: Yes. 2156

Mr. Harris: I thought you wanted Judge Haight's bills.

Mr. Thiess: Well, we have these two from Judge Morris.

(Voucher requisition dated 6/26/1930, to H. M. Morris, for $2500.00, distribution sheet and accounting record were marked Amici Exhibit 72.)

Mr. Thiess: I offer as Amici Exhibit 73 voucher and requisition in the amount of $7500.00, paid to Hugh M. Morris.

Mr. Harris: No bill attached to that one?

Mr. Thiess: No. 2157

(Voucher requisition to Hugh M. Morris for $7500.00, distribution sheet and accounting record were marked Amici Exhibit 73.)

Mr. Thiess: I offer as Exhibit 74 voucher and requisition under date of March 4, 1942, of $7500.00, paid to Hugh M. Morris.

Mr. Harris: No bill attached.

(Voucher requisition dated March 4, 1942, to Hugh M. Morris for $7500.00, distribution sheet

2158 *Colloquy*

and accounting record were marked Amici Exhibit 74.)

Mr. Thiess: Now, if Your Honor please,——

The Master: Is there any bill from Ward and Gray, whatever the name was?

Mr. Thiess: No, what we have from Ward and Gray is on the tabulation. We have a substantial confirmation of what Mr. Berl testified to, giving the dates.

Now, during the testimony of Mr. Hall the question was raised as to the activity of Senator Reed and
2159 Mr. German in the case of Universal Oil Products Company v. Standard Oil Company, and I would like to offer in evidence subject to correction if counsel for Universal should find that it requires correction a tabulation of the activities of Mr. James A. Reed in that case, as taken from the record.

Mr. Harris: What does this consist of? Showing the number of pages he was present in court?

Mr. Thiess: And what he did, as far as the record shows.

Mr. Harris: Well, I am not willing to accept that, not that I say you are inaccurate, but this is an in-
2160 terpretation of it.

Mr. Thiess: No, it is just a statement.

Mr. Harris: Participated in argument on sufficiency of answer, four pages, comment with respect to argument, part of one page, comment, part of another page, then he has one argument of sixty pages, fifty-nine pages—well, I tell you what I think you better do, if the Master doesn't mind, we may study that, let us have a copy of this,——

Mr. Thiess: All right.

Mr. Harris: —and before the next meeting we will see if we can get together with you on it.

Mr. Thiess: All right.

The Master: It isn't very important what Senator Reed did in that case, but, still, there is some point——

Mr. Thiess: Some point was made of it.

Mr. Harris: The only point made, he asked for a million dollars.

Mr. Thiess: I think there was also the point made that Mr. Kaufman was a "rider", just like Senator Reed and German in that case.

(Discussion off the record.)

2162

The Master: I think Mr. Halle himself said Mr. Kaufman was not in the class of these other attorneys and he did not consider him a "rider" in that sense.

Mr. Harris: Your Honor, I assume these bills have been put in for the purpose of trying to show Mr. Halle was mistaken when he stated that he frequently paid Judge Haight——

Mr. Thiess: Well, now,——

Mr. Harris: Just a minute,——

Mr. Thiess: —I object to your intepretation.

Mr. Harris: I am stating what I think this was put in for. Mr. Halle—instead of "offhandedly" I will say without consulting records, based upon his recol- 2163
lection—testified that he frequently made payments to lawyers, particularly to people like Judge Haight, who simply came in said they would like ten or fifteen thousand on account, and he would pay it without bills, and I suppose this is offered for the purpose of contradicting that. Now, I would like to make a study before the next hearing and I will inform Your Honor from the records how many payments were made without bills. If Mr. Halle was wrong it will show he was wrong.

The Master: Well, my understanding is, too, that the bills and the amounts, at least, were offered in part for comparison with payments made——

Mr. Harris: Yes, we can't deny those, of course.

Mr. von Holst: Mr. Halle's testimony, as the Master recalls, was specific to the bills rendered by Judge Haight; "never rendered us a bill", were the words, speaking of Judge Haight's practice.

Mr. Harris: Judge Haight never rendered a bill, in the sense that he sent a bill out and left them react to it, he always went in and talked to them about the
2165 bill, they agreed upon it, and he sent the bill.

The Master: Well, that is a good way to do.

Mr. Harris: It is a custom I have always followed in important matters myself.

The Master: Yes.

Mr. von Holst: There is one matter I think, if the Master please, should appear of record. I would like to ask Mr. Behrens, who has formerly testified in this case and has been sworn, a question, and that is, whether Morgan S. Kaufman is at present attorney for Universal Oil Products Company.

Mr. Harris: If you know.

Mr. Behrens: I don't know. I don't know of his
2166 having been withdrawn from the Crew-Levick case, or "fired", if that is what you mean.

Mr. Harris: That case is quiescent, isn't it?

Mr. Behrens: The case is dead as a horse.

The Master: I may be wrong in my recollection, but I understood Mr. Halle to say his services terminated when he paid him the last check,——

Mr. Harris: No,——

The Master: —and he was no longer attorney——

Mr. Harris: —he said when he paid him the last check that was the last retainer he would get and if he got any more he would have to earn it.

Mr. Behrens: Mr. Thiess added, quantum meruit.

Mr. Harris: We looked that up.

Mr. von Hólst: I think the record should show whether at the present time Morgan S. Kaufman is attorney for Universal in any capacity.

Mr. Harris: I am informed that Mr. Behrens tells me that he is not retained by the company in any capacity whatever, unless the fact that his name appears as attorney of record in the Crew-Levick case amounts to that, and that case, as I understand counsel on the other side concede, is for all practical purposes dead at the present time.

The Master: Yes, but, now,——

Mr. Thiess: You mean the case is quiescent.

The Master: Well, is the case quiescent? I thought from some source somebody made some remark that we should not think the case had petered out, so to speak; but is that not the case?

Mr. Behrens: It is still there. It is off the calendar pending the determination of Globe.

The Master: Quiescent at the moment.

Mr. Harris: There have been no services performed for years by Mr. Kaufman.

Mr. Behrens: I don't think there has been any activity in the case by any counsel in the last two years.

The Master: Nothing done except the filing of the bill?

Mr. Harris: Well, I think there have been some interrogatories.

Mr. Thiess: We will put in the docket, that will take care of it.

Mr. Harris: Aside from that, we know of no connection he has with the company.

2170 Mr. von Holst: But Mr. Kaufman's name has not been withdrawn as attorney of record in the Crew Levick case, is that right?

Mr. Behrens: I wouldn't know without talking to Mr. Hall, who is in charge of the case. I have been told since I have arrived in Philadelphia that Kaufman has been disbarred. That is the first knowledge I have. What Hall has done about it, or if he has conferred, I don't know.

The Master: Well, is there anything else, gentlemen?

2171 Mr. Thiess: There is one other thing that we might discuss at this time—because it is not quite one o'clock yet. That is the proposition of the next hearing.

Mr. Harris: Oh, yes, go ahead.

Mr. Thiess: We have submitted to counsel for Universal the testimony in the second criminal trial case, and before we can really plan our procedure here we would have to ascertain from them what they would be willing, which witnesses they believe they might be willing to stipulate, and we can get together with.

2172 Mr. Harris: We have had no opportunity to read that yet.

Mr. Thiess: What I would like to suggest is that if you would do that, then we could get together on it and then we could determine upon the next meeting and whom we would call at the next meeting.

The Master: Well, you might also shorten the matter by telling Mr. Harris which witnesses you intend to call in any event.

Mr. Thiess: Oh, well, we are going to call Judge Davis and Morgan Kaufman.

Mr. Harris: But you won't offer their testimony?

Mr. Thiess: No.

Mr. Harris: Their previous testimony.

Mr. von Holst: We will also call Mr. J. J. Mitchell, and the Master has received copies of the correspondence and so has Mr. Harris. The last letter indicated he would be in the East in the latter part of September or the early part of October. You appreciate that Mr. Mitchell lives in California.

The Master: Yes.

Mr. von Holst: Now, it may, of course, require a special session just to take his testimony. I haven't heard from him. The last letter inquired as to whether he would want a subpoena allowed and served or whether it wasn't necessary, and I haven't heard from him since then. 2174

Mr. Harris: It isn't necessary. We advised him to advise you that a subpoena was not necessary.

Mr. Thiess: We didn't know, you see, he was no longer in the employ of Universal.

Mr. Harris: He might require one, but I say, we have told him as far as we are concerned that we would not require it.

Mr. Thiess: There is one other matter——

Mr. Harris: Just before you go on with that, I haven't had any rest, Senator O'Mara has been in continuous session of the Legislature since the first of January, in addition to his multifarious other activities. I want to have a little vacation now, I would like not to have another hearing before the middle of October. I think it will take that long before we can read these records and agree on things, anyway. Would that be agreeable? 2175

Mr. Thiess: If it is agreeable to the Master it will be agreeable to us.

The Master: It is all right. I would like to——

Mr. Harris: Mr. Mitchell will be here.

The Master: I would be glad if you could arrange to complete the hearings at the next session, I mean series of sessions, because the Court has been asking me about it. It has been more than a year since I have been appointed.

Mr. Thiess: We will endeavor to do so. I think at the next hearing we can; if we don't wind it up entirely, we will substantially wind it up.

Mr. Harris: Well, I think I will say for the Master's benefit, since we actually commenced hearings I think we have made very good progress.

The Master: Yes, I think we have done pretty well, but still there have been delays, of course.

Mr. McCullough: May I ask a question, Mr. Thiess? Do I understand we can rely on the list that is in the so-called motion——

Mr. Thiess: Yes.

Mr. McCullough: ——that you served as being the only bits of testimony that you desire to offer at all?

Mr. Thiess: Right, and we have also furnished them with a copy of the testimony of Cooley, and we want to offer the testimony of Judge Biggs given in the Grand Jury proceedings in Philadelphia, and we will furnish you with a copy of his evidence.

Mr. Harris: We, of course, maintain our position that the testimony ought not to be presented this way.

The Master: Well, you mean even though he is called as a witness, you mean to offer it?

Mr. Thiess: We will offer it.

The Master: Judge Davis, you said?

Mr. Harris: Judge Biggs.

The Master: Oh, Judge Biggs, oh, yes.

Mr. Thiess: If you should object to the competency of Judge Biggs' testimony, why then we will possibly call him as a witness.

Mr. McCullough: What about the exhibits that you listed in that motion?

Mr. Thiess: What is that?

Mr. McCullough: What about the long list of exhibits?

Mr. Neuman: You will find them, we have indicated where they are.

Mr. McCullough: I know. The indications are they are in the possession of the Master or the District Attorney. That doesn't do us any good.

Mr. Neuman: Let me explain that.

Mr. McCullough: I have read it just as carefully 2180
as you have. Some of them are reproduced in the first trial, I understand that, some of them are reproduced by reading to the jury in the second trial, but I understand there are a substantial number of them which are either, if I recall correctly, stated to be in the possession of the Master, or the District Attorney, or the Grand Jury, or somebody else.

Mr. Neuman: We have separated them. Some are read into the record in the second indictment trial. We have designated those. The others are in the possession of the Master, which you have had an opportunity to examine, and we have listed those.

Mr. McCullough: That is what I have said. 2181

Mr. Neuman: That is all we have set out in that motion.

Mr. McCullough: Where did we have an opportunity to examine those?

Mr. von Holst: Last fall.

Mr. Neuman: Last fall. The only time we ever saw them was in this office.

Mr. McCullough: You want to offer them. You can't ask us to come down and casually read them and make up our mind. I think you should furnish copies.

Mr. Neuman: We are not in a position to.

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Mr. McCullough: He will let you make copies.

(Discussion off the record.)

Mr. Neuman: All that we have are brief notes.

Mr. Thiess: If it is agreeable to the Master it certainly is agreeable to us.

The Master: You are referring now to what, exactly?

Mr. Neuman: There are many letters which you obtained from the District Attorney's office relating to the Kaufman-Stokley transaction which were not

2183

read into the second criminal trial,——

The Master: Yes.

Mr. Neuman: —and we know of those because we saw them here and we made certain brief notes as to their contents, and we propose to offer them. Now, we are not in a position to supply them to Universal unless you turn them over to us so that copies or photostats may be made of them.

The Master: Well, of course, we are adding to the record here.

Mr. Harris: Well, they propose to put them in evidence.

The Master: You don't feel it would be adequate

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if they would produce them at a hearing, show them to you, and then discuss their admission?

Mr. Harris: I should hardly think so. In a trial, of course, you have an opportunity at recess and at night to look at them and examine the witnesses about them,——

The Master: Yes.

Mr. Harris: —but we are now being given some "canned" testimony and the exhibits that go along with it, and it seems to me we ought to have a chance to study them.

Mr. Thiess: All it would involve, if the Master please, it would involve making a photostatic copy

of those letters that you have in your possession, and possibly Mr. Rodebaugh could do that and send both of us a set of those.

Mr. Neuman: We don't have a set of them.

Mr. von Holst: Why couldn't we send you a list, Mr. Master, of those that are referred to in our motion, and we will perhaps have them photostated here and then they could either transmit the photostats to us, to transmit to Mr. Harris, or have them sent direct to Mr. Harris. I think if they were transmitted to us it would be preferable, because then we could get together. 2186

The Master: Do I understand you want exactly what is in your motion, or will you send me a new list?

Mr. von Holst: We will send a list.

The Master: Those that you desire to have copies of.

Mr. von Holst: Yes.

Mr. Harris: It is the same list in the motion?

Mr. Thiess: It very likely will be, but in order to make it perfectly clear we will send it.

The Master: Very well.

Mr. Harris: Two o'clock? 2187

The Master: Two o'clock.

Mr. von Holst: When do you think, Mr. Harris, you will be able to get together with us on this question of possible stipulation of that testimony?

Mr. Harris: Well, I doubt if we are going to get together with you, to be very frank, except on matters that are so non-controversial events that by no possible stretch of the imagination could cross examination change the interpretation. Wherever the witness has testified to something that is controversial or where we do not feel that fair opportunity has been

presented to put our point of view, we obviously are not going to consent. Without looking at that, I should doubt if there was very much there that we would feel like stipulating.

Mr. Thiess: Well, when do you think you would be able to tell us?

Mr. Harris: We will try to tell you by the 10th of October.

Mr. Thiess: All right, that is fine, because if you tell us——

2189 The Master: You are proposing to subpoena Stokley?

Mr. Harris: We certainly, I can tell you right now, are not going to stipulate Mr. Stokley's testimony.

The Master: I imagined that was one you would not stipulate.

Mr. Harris: That was complicated.

The Master: Yes.

Mr. Harris: Partially because the District Attorney's questions——

The Master: Very contradictory.

2190 Mr. Harris: Very contradictory.

The Master: Confusing. If you intend to rely on Stokley you really had better subpoena him.

Is there anything else we could decide on right at this moment?

Mr. Harris: Well, they are going to call Judge Davis and Mr. Kaufman.

The Master: Yes.

Mr. von Holst: What about bank witnesses?

Mr. Harris: I don't know, I want to see that. I have never seen their testimony.

The Master: What witnesses?

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Mr. Harris: Bank witnesses, in the criminal trial.

Mr. Neuman: Tracing the bills.

Mr. Harris: This money Fox is said to have gotten around to Judge Davis.

The Master: I presume they are accurate.

Mr. Harris: They probably are. We will look at that.

Mr. von Holst: Cooley?

Mr. Harris: I don't know what he testified.

Mr. Thiess: Mr. Harris, the reason we would have to know, you see, our preparation for the next hearing will depend upon what we hear from you.

2192

Mr. Harris: I say, we will let you know by the 10th of October.

Mr. Thiess: We will have a lot of work to do.

Mr. Harris: I know you will.

Mr. Thiess: If you are going to tell us you are not going to stipulate any of these witnesses in October, we will have to start from scratch, practically.

Mr. Harris: That is right.

(Discussion off the record.)

Mr. Harris: I think you should go on the assumption, unless it is perfectly clear that no possible harm could come to us from stipulating testimony, or unless it is so clear that no amount of examination and cross-examination would change the testimony or the implications of it, that we can't stipulate.

2193

Mr. von Holst: If we do not hear until the 10th of October it will be difficult to get the subpoenas out and served. Now, even in this instance we have had difficulty, for instance, in the case of Mr. Ungerleider, he wasn't here, he was in Washington, and the subpoena wasn't served until quite recently.

The Master: Yes.

2194 *Colloquy*

Mr. Harris: Well, now, you are going to have to subpoena Stokley, Kaufman, Davis and Ungerleider.

Mr. Thiess: We can't subpoena them until we know when we are to have a hearing.

Mr. Harris: Yes, well, we will fix that now, if you wish.

Mr. Thiess: We can't very well fix that until we hear from you.

Mr. Harris: Well, now, look here, this is too important to our clients for us to hurry on it too much. After all, we have let you set the tempo here largely
2195 at such time as you were ready and prepared to go on. I think we ought to be given an opportunity, if we are asked to stipulate; if we are not, of course, all I can ask is for a little vacation period. We will do what we can, Your Honor.

The Master: I think five days is too little to subpoena witnesses.

Mr. Harris: Make it the 20th of October, then, about the 20th, for the next meeting.

The Master: Suppose we consult our calendars and discuss that after lunch.

Mr. Harris: All right.

2196 The Master: Two o'clock.

(Recess, 12:55 until 2:00 o'clock P. M.)

AFTER RECESS

Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae (Continued)

Mr. Harris: Mr. Master, may it appear on the record that Mr. German, general attorney for the

Skelly Oil Company, has spent some little time examining the bills of Judge Haight and others offered in evidence by Mr. Thiess, obviously purely as a matter of idle curiosity.

The Master: Well, I have no information on that subject.

THORN LORD, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. von Holst:

2198. Q. Will you state your name, Mr. Lord? A. Thorn Lord.

Q. And your residence? A. Princeton, New Jersey.

Q. And your occupation? A. I am Assistant United States Attorney for the District of New Jersey.

Q. You are testifying here pursuant to subpoena, are you, Mr. Lord? A. I am, sir.

Q. You were at one time law clerk to Judge J. Warren Davis, while he was judge of the Court of Appeals for the Third Circuit? A. Yes, from January, 1931 until the end of 1935, I believe.

Q. And as his law clerk will you state briefly what your duties were? A. I was given problems, legal problems to 2199 look up and work out, draw up rough memoranda for the Judge, to assist him in preparing his memoranda and his opinions—general referenda work.

Q. Did that work entail working up memoranda of the facts in a case as well as of the law? A. Oh, yes, I frequently read the records, the transcript, and prepared summaries of the evidence, particularly in cases that had long records.

Q. And when you prepared these summaries then you submitted them to Judge Davis? A. Yes, submitted them to him, and we generally discussed them.

Q. I see. Did you have any part in the drafting of opinions, in the sense of reading them and making suggestions? A. Yes.

Q. In their draft form? A. I edited, I edited most of the opinions after he had written them, and I assisted him in preparation in the rough form of opinions and made suggestions and discussed problems with him.

Q. By editing, you mean you correlated them to the record,—— A. Yes,——

Q. —or just what did you mean by "edited"? A. Reading them for their context or making corrections if it appeared to be necessary, such as stenographic errors or reframing—suggesting, making suggestions in reframing language that had been used so it would be clearer, and in general I discussed, oh, I should say fully half or three-quarters of the cases that he worked on.

2201

It might be helpful if I tell you briefly how I did work. My headquarters was at Trenton, in his chambers. He, of course, came to the Circuit Court of Appeals in Philadelphia. I was down here only infrequently. It was not my habit to leave his chambers there, and I did all the work in his library, where I had my desk.

At that time the Circuit Court of Appeals had two terms a year. One of them I think—I think they were referred to as the October Term and the March Term. The Court sat, from October the first until the middle of October, generally sat two weeks. During that time he was usually in Philadelphia all day, and it was his custom to have the clerk mail the briefs and records in the cases back to Trenton. He generally had rough notes of any features in the case that he considered of interest or importance, and also generally a statement as to how he felt the case should go, the result of it. He then would return after the two weeks' session and would work on the cases. During the first two weeks, when he was not there, I generally worked

2202

on as many cases as I could, prepared in some instances rough memoranda on both the facts and the law, and in some cases simply looking up legal problems. Ordinarily they heard between thirty-five and forty or fifty cases at each of those two sessions, and at the end of the month or the first day of the following month, when they would again sit for two weeks, they had a conference in Philadelphia, which I, of course, did not attend. For that conference the Judge prepared a memorandum in each case, which was something in the nature of a rough opinion of his own. Prior to the conference he would discuss generally most of the 2204
cases and would spend anywhere from a day to two days in our discussions in his office of each case, and the work that had been done, and a discussion generally on the memoranda that had been prepared in each case.

Then he would go to Philadelphia with a memorandum of all the cases and they would have a conference, which, as I understand it, each Judge had a memorandum, a written memorandum prepared in each case, that is, that was the custom—sometimes they were not able to complete all of them—and the junior judge would speak first and give his conclusion or make a statement as to the case and his conclusion in it, and then the next in order, and finally the senior judge. 2205

After that the senior judge would divide the work up and assign each judge their proportionate share of the cases for an opinion, and that judge to whom a case was assigned would prepare an opinion and then send it out by mail to the other judges, and they would consider it, and if accepted, would indicate so in a letter which would be addressed to the judge to whom the case had been assigned for opinion. If they could not agree on it, or if they disagreed in conference on the case, generally one of the judges was selected to write a report, an opinion in the form of a report to the judges as a suggested form of opinion, and that would be

2206 *Thorn Lord—For Amici Curiae—Direct*

sent out, and in some cases there would be an additional conference in Philadelphia about the case, or the majority would accept that as the opinion of the Court.

My work, as I say, consisted of the usual duties of a law clerk. I would summarize the evidence, look up legal problems, or in some instances even prepare a memorandum which he might accept as his conference memorandum. So far as the opinions were concerned that the Judge wrote, those, of course, were his work and I had nothing to do with them other than to prepare a statement for him of some legal question or a statement in reference to the evi-
2207 dence.

Q. During that time that you were law clerk to Judge Davis did he pay your compensation personally, or was that—— A. No.

Q. —received from the United States Government? A. About 1930 the Congress passed an Act giving the Circuit Judges law clerks, and I was paid by—I was employed by the Attorney General and paid by the Attorney General. The Court, the clerks, of course, were then under the jurisdiction of the Department of Justice. My appointment came from there.

By the Master:

2208

Q. Were there other law clerks in the Circuit Court besides yourself? A. Yes, sir.

Q. How many? A. Well, now, I believe all the judges have law clerks, but at that time——

By Mr. von Holst:

Q. By "that time" you mean 1935? A. I mean during the period that I was there.

Q. That you were there. A. Judge Woolley had a law clerk, and Judge Thompson. Judge Buffington did not have one. He never had one. As a matter of fact, he never had a

secretary, he used one of the girls in the Clerk's Office, because he didn't believe in them. In other words, there were three, sir, in the Circuit Court of Appeals.

Q. Who were the others, besides yourself? Do you know the names? A. I don't know, I never met them, I knew the Judges but not the law clerks, and I think Judge Thompson had a young woman at that time. It might have been his daughter, I am not sure.

Q. Do you know Mr. Morgan S. Kaufman? A. Yes.

Q. When did you first meet Mr. Kaufman? A. I am afraid I can't say with certainty. I knew him prior to 1935. 2210
I think possibly I had met him either in Trenton, at the Judge's chambers, or in Philadelphia, at the court, possibly once or twice. I occasionally——

Q. That is, prior to 1935? A. Yes. I occasionally went to the court when there was some case of interest, of particular interest, I went down and listened to it, and sometimes I met some of the attorneys or saw them there, but I am not just—I am not certain what year it would have been.

Q. Prior to the fall of 1935? A. Yes.

Q. Now, can you state how often, about, prior to the fall of 1935 you had seen Mr. Kaufman? A. Possibly once or twice.

Q. And that was where, Philadelphia, or in Trenton? 2211
A. I have just said I don't know, I don't recall, either in Philadelphia or at Trenton. I believe he—I believe I might have seen him in Philadelphia and in Trenton on one or two occasions.

Q. Were you introduced to him? A. Oh, yes.

Q. By whom? A. Well, I don't know, I don't remember that.

Q. You don't remember? A. Possibly Judge Davis.

Mr. Harris: Well, I wish the witness wouldn't say "possibly Judge Davis", "I possibly met him once or twice". It either was Judge Davis or it wasn't.

The Witness: Very well, sir. I am perfectly aware how to testify and I will keep my answers to facts.

Mr. Harris: I move to strike out the answers containing the word "possibly".

By the Master:

Q. Well, your best recollection is what? A. My best recollection, sir, is that I don't remember.

2213 *By Mr. von Holst:*

Q. Prior to the fall of 1935 had you had any business relations with Mr. Kaufman? A. No.

Q. Had you prior to the fall of 1935 had any dealings with Mr. Kaufman involving your legal abilities or your legal work? A. No.

Q. Had you practiced law before you became Judge Davis's law clerk? A. In a rather casual fashion, yes.

Q. Where? A. I had been admitted to the bar in North Carolina in 1928 and I had done some small amount of work there, I say, in a very casual way.

Q. That was in North Carolina? A. Yes.

2214 Q. Prior to your appointment as law clerk to Judge Davis had you practiced at all in Pennsylvania? A. Never practiced at all in Pennsylvania at any time. I am a member of the bar of New Jersey.

Q. Had you practiced in New Jersey prior to the time you were appointed law clerk? A. In the same casual way, I mean, when small things were brought to me I practiced.

Q. And in what city was that? A. In Trenton.

Q. Do you know that Mr. Kaufman was an attorney practicing before the Court of Appeals for the Third Circuit?

Mr. Harris: Well, just a minute, if he knows.

Mr. von Holst: I asked him——

Mr. Harris: From his testimony it seems apparent he didn't know.

The Master: I think he has already said he had seen him down there.

A. Yes, sir, I knew that he practiced before the Circuit Court of Appeals.

By Mr. von Holst:

Q. When did you first learn that he was thus practicing, do you remember? A. I don't recall. I believe he had cases on and off during the whole period that I was there. 2216

Q. Did you know that he was practicing before that Court before the fall of 1935? A. I did.

Q. Now, do you recall a meeting with Mr. Kaufman in the chambers of Judge Davis in October of 1935? A. Yes.

Q. Do you recall the day? A. No.

Q. Now, will you describe what occurred at that meeting, who said what, as near as you can remember the substance of the conversation?

Mr. Harris: Now, excuse me, Mr. Lord, a moment:

The Witness: Yes, sir.

Mr. Harris: I want to interpose an objection to any conversations as being hearsay so far as my client is concerned and not binding on Universal. 2217

The Master: What was the question?

Mr. von Holst: To describe, to relate the conversations with Mr. Kaufman in Judge Davis's chambers.

The Master: Well, I think in view of the nature of the investigation which I am instructed to conduct by the Court of Appeals that any conversation with either Mr. Kaufman or Judge Davis would be relevant, which has anything to do with the transaction in question, or between the two.

Mr. Harris: Well, I didn't doubt that, Your Honor. I only interposed the objection that it was not in any event on the showing so far made binding upon my client.

The Master: Well, that is another question.

Mr. Harris: Yes, sir, I just want to keep the record straight.

The Master: Yes.

A. On the particular day that you are referring to I was in my office and was called into Judge Davis's office, and Mr. 2219 Kaufman was there, and a Mr. Stokley, of Florida. I had met Mr. Stokley a short time before that and I knew that he was a cousin of Judge Davis's, and I was told that Mr. Kaufman was to—I was told by Judge Davis that Mr. Kaufman was going to make a loan to Mr. Stokley to repurchase Mr. Stokley's farm, which had been sold for taxes by the local authorities in Florida—the farm was outside or near a place called Mount Dora, Florida—and that Mr. Kaufman—and Mr. Kaufman said that he would be unable to go to Florida at that time, but at the suggestion of Judge Davis he was perfectly agreeable to have me go there to see that the check was delivered to the proper authorities, and I was to 2220 receive certain legal documents and forms of mortgages, title insurance, and a deed from the Town of Mount Dora.

By Mr. von Holst:

Q. When was the first time that Judge Davis mentioned this proposed Stokley loan to you? A. That was, as nearly as I can—to my best recollection, it was then.

Q. You had not heard any proposal of a loan to Stokley before that time? A. I had not.

Q. I mean, a loan for Stokley. A. I don't recall that I had.

Q. Now, at the beginning of that conversation who was present? A. Judge Davis, Mr. Morgan Kaufman and Mr. Stokley.

Q. And yourself? A. And myself.

Q. And then what did you do, what did the parties do? A. Then there was some discussion as to the form of—the form of an agreement that was to be drawn between Mr. Stokley and Mr. Kaufman.

Q. Where was that discussion held? A. Preliminarily, it was held in Judge Davis's office.

Q. With Judge Davis present? A. Yes. Judge Davis then said that the terms could be—Judge Davis then offered 2222
his stenographer and said that they could go into the library, where I worked, and agree on the terms and prepare whatever agreement that Mr. Kaufman desired.

They then went into the library, which is a large room, about fifty feet long, I should say, and they sat—Mr. Stokley and Mr. Kaufman had some discussion, in fifteen or twenty minutes, at the table in the opposite end of the library from my desk. After that his secretary—after that Judge Davis's secretary, Miss Martha Kliesh, was called in——

Q. How do you spell that, please? A. K-l-i-e-s-h—was called into the room, and Mr. Kaufman began—commenced to dictate a memorandum to her containing the terms of the 2223
agreement which he and Mr. Stokley had discussed there. During the course of it—I wasn't present at the conversation, I was at the opposite end of the room—during the course of the dictation of this agreement they called me over and asked several questions or discussed several questions with me in the nature of what he wanted done.

The agreement was then taken by—or, the notes of the stenographer, Miss Kliesh took the notes into her office and began to type them up, and shortly—shortly before it was completed—no, she then prepared, as I recall, a rough draft of it and gave it to Mr. Kaufman, and he went over it. I was

present at that time, and I recall that he said that—I recall he had some discussion with Stokley which I believe caused an amendment to it. Stokley advised him that he had certain additional security that he would give him, a group of houses over on the other side of Mount Dora, tenant houses, either a store or warehouse which he owned outright, and also a grove which was contiguous to his farm that he was repurchasing, and that had not been affected by this tax matter; and she then took the rough form of the agreement and went in to copy it up, and shortly before it was completed Mr. Kaufman said that it would have to be sent to him, that he
2225 had to catch a train to New York or Philadelphia, and he left there.

Q. What was done with that agreement, with that rough draft, do you know? A. I couldn't say, sir.

Q. You haven't seen it since that time, is that right? A. No.

Q. I mean the first draft. A. No, I don't recall, I don't recall ever seeing it after that time.

Q. And the agreement which the typist finally typed, did you send that to Mr. Kaufman? A. I don't recall sending it. I don't believe I did.

Q. Now, was anything said at this time that you were
2226 to represent Mr. Kaufman as his lawyer in closing this deal? A. Not in so many words, I was—I mean, not in those words, that I was to represent him as his lawyer.

Q. Just what was said on that score so well as you remember it? A. As well as I remember——

Mr. Harris: Just one minute, please, Mr. Lord.

The Witness: Yes.

By Mr. Harris:

Q. Is this a conversation other than the one you have already described in Judge Davis's chambers? A. No, as

best I can recall it now, the only conversation I had with Mr. Kaufman was that day.

Q. The one you have already described? A. I mean, before I went down there.

Q. The one you have already described? A. Yes.

Q. All right, sir. A. Of course, that lasted—this discussion lasted most of the afternoon. I was there part of the time, present.

Mr. Harris: Well, I just wanted to be sure that this was the same conversation.

The Witness: Same day, as I remember, he came in early in the afternoon and left somewhere around five or six. 2228

By Mr. Harris:

Q. But, I mean, these instructions that Mr. von Holst is now asking you about, in respect to going down and closing the transaction,—— A. Yes.

Q. —that is the conversation you have already described? A. Yes, my point was that I was not employed as an attorney.

Q. That is right. A. I received no fee from him. In fact, I received nothing from Kaufman.

2229

By Mr. von Holst:

Q. You did receive a fee from him? A. I did not receive a fee.

Q. Didn't Stokley pay you? A. Paid my expenses.

Q. Oh, he paid two hundred dollars, didn't he? A. No, as I recall I gave him an itemized list of my expenses to Florida, and he gave me, it was something less than a hundred dollars, somewhere around ninety or a hundred dollars.

By the Master:

Q. You were never paid for your services at all? A. Oh, no, sir.

Q. Did you ever ask anybody to pay you? A. I didn't expect any payment. As I understood the—as I understood the situation, at Judge Davis's request, and I being a rather shabby law clerk, who didn't object to going to Florida, at Judge Davis's request I was helping out his cousin who was in these difficulties, which I was perfectly willing to do.

Q. You were really doing it on Judge Davis's account, then? A. Yes, I should say so.

Q. Rather than for the compensation received? A. It was completely informal.

Q. I see. A. I mean, I never considered myself seriously,
2231 as an attorney for anyone in the thing, I was simply going down and seeing that the papers were—that the check was delivered to the town authorities. I made no title search.

Q. No. A. I did none of those things which you usually do. I drew no papers, as a matter of fact. In other words, I was simply a——

By Mr. Harris:

Q. A messenger? A. In my judgment I was simply more or less of a messenger that Kaufman had relied on to carry out specific instructions.

Q. You were only gone a few days, weren't you, three or
2232 four days?

By Mr. von Holst:

Q. You might state the day you arrived and when you left, if you will. A. Well, I recall——

Q. What day of the week was it when you reached Florida? A. I recall—I recall leaving Trenton on—on Friday in the afternoon, and I went—no, at night on Friday, I went from there to Charleston, South Carolina, and stayed in Charleston from about noontime until midnight, took the midnight train to Jacksonville, and then arrived in Mount Dora that afternoon, on Sunday.

Q. Sunday afternoon? A. Sunday afternoon.

Q. And then how long did you stay there? A. I was there Sunday and Monday, Sunday afternoon and Monday.

Q. And left what time on Monday? A. I left Monday, late Monday afternoon, and arrived back in Trenton the following afternoon, went directly from there to Trenton—not from there, but Sanford, the station near, the station near Mount Dora.

By Mr. Harris:

Q. At that time you had some vacation coming to you, didn't you? A. Oh, my, yes, we always have vacations coming to us, when you work for the Government. In fact, I worked twenty-four months a year, on the hourly basis. 2234

Incidentally, in reference to that subject, I was—this was sometime in the latter part of November, and I had expected for some—for some months prior to that time I had expected to leave Judge Davis. As a matter of fact, at this time he had a new law clerk who was there working with me about this time, and I was completing my work, and I wanted to get back as promptly as possible because I had expected for about a year to be—to go into the United States Attorney's office.

By the Master: 2235

Q. When did you actually leave Judge Davis's employ? A. I actually left the following month, in December.

Q. At the end of December? A. Well, I went—I went away sometime around, as I recall, I was away on a vacation, away on a vacation beginning about the Christmas holidays. I was completing my work when I went down to Florida.

By Mr. von Hoist:

Q. What agreements did you take down with you, or what agreement? A. To the best of my recollection I took down

no agreements, I took a check, a certified check drawn on a New York bank to the Town, to the order of the Town of Mount Dora, and I don't recall taking anything else with me. In fact, I know I didn't take anything else.

Q. You only had a check? A. That is right.

Q. Did you not have with you the agreement which had finally been—— A. I did not.

Q. —drawn between Kaufman and Stokley? A. I did not. I had been informed that that agreement would be in Florida, that Mr. Stokley had it. I believed he received it directly from Mr. Kaufman.

2237 Q. I just wanted to call your attention to the fact, Mr. Lord, the reason I asked you that question is that in the second indictment trial of Davis and Kaufman you testified as a witness, didn't you? A. Testified in both cases, yes.

Q. Yes; and at page 1390 of that transcript, which I show you, you in answer to this question——

Mr. Harris: Is this the second trial, you say?

Mr. Neuman: Second trial.

By Mr. von Holst:

Q. It says here: "And do you have with you that pro-
2238 posed agreement and the check?" And the answer is: "A. Yes" Now, that——

Mr. Neuman: That is the first trial.

Mr. von Holst: Oh, it is the first trial. I think from the context that "do" was "did," rather than "do," as they have it here.

The Witness: Yes, apparently.

Mr. von Holst: That is the only reason that I asked you the question.

The Witness: No, my recollection is that—that there was—I have testified so many times about these things now, that I couldn't tell you what I said at

one time, but my recollection is that—because I was asked a number of times as to where Mr. Kaufman signed the agreement, and I recall the incident of his leaving the office before the agreement was signed, and I recall not having seen the agreement again until it was produced for me in Florida, and at that time it had been signed by Mr. Kaufman.

By Mr. von Holst:

Q. And you never saw Mr. Kaufman sign the agreement? A. No, I did not. It was signed when Mr. Stokley and his wife executed it, it had been signed. 2240

Q. So you were not present when any of the signatures were put on the agreement, is that right? A. Oh, yes, I was present when Mr. Stokley and his wife executed the agreement in Florida. I returned, I returned with some of the papers.

Q. Yes, I will come to that in a moment. So you saw the agreement after you arrived in Florida in the possession of Mr. Stokley, is that right? A. That is my recollection.

Q. And you went with them before a notary and they signed it? A. Well, if I could see the agreement——

Q. Yes, I will hand you the certified copy of the agreement—— A. Yes, sir. 2241

Q. —which we got from the county records. A. I will recognize it.

Q. This, of course, is not the agreement itself that you saw, Mr. Lord, this is the agreement as it is recorded, and it is a photostat of the records of the County Clerk down there—handing you Amici Exhibit 55.

(The witness examined Amici Exhibit 55.)

The Master: Has that agreement been offered in evidence?

Mr. Harris: Yes, that is 55, he just referred to it.

The Witness: Well, I don't see any—any evidence that this was signed before a notary. Apparently, apparently Mr. Kaufman executed it before a notary in New York County, C. M. Brennan, but I don't see—it was apparently witnessed by L. R. Tremain and W. E. Snell, as to Charles L. Stokley and Delta Stokley.

Mr. von Holst: Yes.

The Witness: Their signatures, those signatures were affixed in Mount Dora.

2243

By Mr. von Holst:

Q. Then, amending my question, you were present when they signed that instrument? A. Oh, yes, I think you will find, if you have the original or copy of it, you will find some of my handwriting on it, but, you see, Mr. Kaufman apparently executed this on—no, this appears afterwards, '37, that is afterwards.

Q. There is one other thing that I would like to show you on this question, and that is, referring to page 2257 of the second indictment trial,——

(Discussion off the record.)

2244

Mr. McCullough: Second indictment?

Mr. Harris: Criminal trial, yes.

By Mr. von Holst:

Q. —a letter to Mr. Stokley from J. Warren Davis was read into the record. A. Yes, sir.

Q. And on page 2258 of the record, this letter being dated November 21, 1935, Judge Davis says to Mr. Stokley:

"We have the agreements between you and Mr. Kaufman which have been executed by Mr. Kaufman.

Mr. Lord will bring them down with him and have you and Cousin Delta sign them and leave one with you and bring the other back to Mr. Kaufman."

Now, that would indicate that Judge Davis expected you, then, when he wrote that letter, to bring the agreement down? A. It would seem so, yes.

Q. I merely bring it to your attention to see if that refreshes your recollection at all. A. It does not, sir.

Q. Now, when you arrived at Mount Dora on that occasion will you describe just what you did? A. I arrived, as I 2246
recall, at the station near Mount Dora called Sanford, and I was met there by Mr. Stokley and driven to Mount Dora to his home, where I stayed overnight. During the afternoon, or during that afternoon or early evening he took me over the property and showed me what—described the different pieces that were to be incorporated in the agreement. We also went down to see an attorney, the city attorney or city solicitor of the Town of Mount Dora, a man whose name I don't remember now, went to his house and had some discussion with him about what would be done the next day, and it was agreed with him—he was familiar with all the details of the transaction, I think had either had some correspondence with Mr. Kaufman or Judge Davis, and, at any 2247
rate, he knew the facts about the thing, he knew what was to be done and had been awaiting my arrival there to close the matter, he told me that he had arranged to have a meeting of the town officials the next day at noon time and that I should be there to deliver the check and they would—they would then turn over the deed of the property to me, and if I came in his office the following morning I could see the deed and ask any further questions I wanted to.

The following morning I went with Mr. Stokley to the town and had discussion with Mr.—this lawyer, the city solicitor, and also with some persons that Mr. Stokley had

obtained to draw the deeds for the additional security, and I then went with Mr.—with the attorney, the city solicitor, to the town meeting and sat through it while the proper resolutions were put through, and delivered the check, which, as I recall now, was made to my order, I said a moment ago to the order of the Town of Mount Dora, but as I recall it I endorsed it to the Town of Mount Dora. I then received the deeds.

In the meanwhile I had gotten in touch with the title company and had been advised that the papers could be—that the title insurance policy would be delivered to me at
2249 the county seat.

Q. Where is that? A. Well, that was at a place called Tavares, which was a half a dozen miles from Mount Dora. During the afternoon I went with the several papers, that is, the deed—I think there were three deeds in all—to the county seat and I picked up the title insurance and had the papers recorded.

Kaufman had told me previously or had said in my presence to Mr. Stokley previously that he wanted the—he did not want to bother with a mortgage, that he wanted the property deeded directly to him so that if he had any trouble he would not have to go through foreclosure, and it was, of
2250 course, what we call a transaction in the nature of an equitable mortgage, and I had those papers recorded. I brought the title policy back, and the agreement. Other documents, of course, were left there and were to be returned by the clerk after recording. And then I returned to Mount Dora and left that same day for Trenton.

Q. Did you check the descriptions in the policy against the descriptions of the deeds? A. I don't recall that the policy had any descriptions in it. If you would let me see a copy of it I could tell you.

Q. I hand you a document that has been introduced in evidence as Amici Exhibit 58 and ask you if that is the policy that you picked up, as you have said.

(The witness examined Amici Exhibit 58.)

A. Yes.

By Mr. von Holst:

Q. Did you check the legal descriptions in that policy with the legal descriptions in the deeds? A. Apparently I could not have, because there is no description in here.

(Mr. Neuman indicated a place in the exhibit.)

The Witness: Well, this is not a description, that is an abstract. 2252

Mr. Neuman: No, this description of the properties (indicating).

The Witness: I wouldn't, I couldn't say, because that doesn't appear to me to be the description. Either one—as a matter of fact, this policy was intended to cover—this was added on, as you see—this policy was intended to cover——

By Mr. Harris:

Q. What was added on, the sheet that is pasted inside of it? A. Yes, this policy was intended to cover the deed delivered by the Town of Mount Dora to Morgan S. Kaufman, warranty deed dated November 25, 1935, and I believe this was added on subsequently, when they found that they were going to have the additional security, but I don't—I don't consider this a description at all. 2253

By Mr. von Holst:

Q. Was this sheet—— A. Of course, I identified, of course, I identified this as the warranty deed referred to, and likewise these, but I couldn't have checked the description, because there isn't any there.

2254 *Thorn Lord—For Amici Curiae—Direct*

Q. Let me ask you, was this sheet that is pasted to the inside of the policy, was that on it when you picked it up, do you remember? A. Oh, yes.

Q. It was? A. As far as I recall, it was.

Q. Mr. Lord, this agreement, Amici Exhibit 55, has a provision in it—I think I will refer you to the paragraph, beginning the last paragraph on the page and continuing on the next page, concerning county and State taxes aggregating twenty-seven hundred dollars, does it not?

The Master: What was your question, Mr. von
2255 Holst?

Mr. von Holst: I called attention to the paragraph——

A. Yes.

Mr. von Holst: —in that agreement relating to the twenty-seven hundred dollars State and county taxes.

A. (Continued) Yes, I see that paragraph to which you refer.

Mr. von Holst: That is in the deed, if the Master
2256 please.

The Master: Yes.

Mr. von Holst: Have you got a copy of that for the Master? May I have that a moment?

The Witness: Yes, sir.

Mr. von Holst: If the Master please, the paragraph I am calling his attention to is the one beginning here,——

The Master: Yes.

Mr. von Holst: —and up here.

The Master: They agreed to pay that.

Mr. von Holst: Yes.

By Mr. von Holst:

Q. And I also call your attention to one of the "whereas" clauses on the first page, which states as follows:

> "WHEREAS the party of the second part desires and agrees to pay to the party of the first part the said sum of $10,000, and in order to secure said payment to execute a deed for certain other property belonging to him which is free and clear of all encumbrance, to wit:
>
> "a certain tract of land known as 'My Pet Grove' 2258
> consisting of about four acres; a certain other tract on which there is a building known as 'Stokley's Cement Building in East Town'; and another tract o. tracts on which there are five houses. (All of said properties to be fully and accurately described in the deed of conveyance),"

referring first to the paragraph that I first directed to your attention,

> "The party of the second part hereby and herein agrees to furnish to the party of the first part at the time of the execution to him of the said deed 2259
> by the Town of Mount Dora a title insurance policy showing that there is no encumbrance upon the said property conveyed by deed to the party of the first part except county and state taxes aggregating twenty-seven hundred dollars ($2700.00) which the party of the second part agrees to pay on or before February 20, 1936."

Was that provision as to State and county taxes in the original draft of the agreement which was drawn up in Judge Davis's chambers in October, 1935? A. You mean the first draft, the rough memorandum?

2260 *Thorn Lord—For Amici Curiae—Direct*

Q. No, the one that was typed up, did it have any reference to State and county taxes in the sum of twenty-seven hundred dollars? A. I am afraid I don't recall.

The Master: Did he say he did not?

The Witness: My recollection is that some question was raised about some additional taxes and that it was not discussed during the first conference at all.

By Mr. von Holst:

Q. And it came up afterwards? A. It came up after-
2261 wards. When, I don't know.

Q. Yes. A. So about the best I can say, I remember some discussion about it subsequently. Mr. Stokley apparently didn't—was not aware of the taxes, or had not understood it in some way.

Q. Now, do you recall when this discussion was, and with whom? A. Yes, I recall discussing that question with Judge Davis.

Q. Subsequent to—— A. Subsequent to Morgan Kaufman's visit there in October.

Q. I see. A. You see, at the time, in October, I understood that I was to go down within two or three weeks from that time. Actually, I didn't go down until about six weeks
2262 later, five or six weeks later, and when I asked when I was to go, at some subsequent time, I recall having him say something to me, Judge Davis say something to me, that a question had arisen in reference to taxes that had not been connected with the State and town taxes, that were to be compromised for ten thousand dollars.

Q. The taxes that were to be taken care of by the deed were the city taxes, were they not? A. Well, I don't—I don't recall. All I remember is that there had been some litigation in the State of Florida over those taxes, which were taxes, as I remember, they were assessments for streets, lights, curbing, and things like that.

Q. Yes. A. And whether they were city or county taxes, I can't tell you.

Q. But then you do recall that at a subsequent time you had a talk with Judge Davis? A. Yes.

Q. About additional taxes? A. Yes.

Q. Which had not been discussed in the first interview? A. No, I was informed that that was what was holding up the matter, because I wanted to know when I was to go, you see.

Q. Yes, and, Mr. Lord, wasn't it in connection with these additional taxes that the question of the additional security 2264
came up, namely, that that additional security was to secure these other taxes that had not been discussed in the first conference? A. I can't say. I can recall that he—I can recall that Mr. Stokley informed me, it may have been at a later time, that he had this additional security, that is, which he refers to, or I recall now from looking at that, as his Pet Grove, and the five houses over across the way.

Q. Yes. A. And he made two trips, as I remember, to Trenton, the one trip Mr. Kaufman wasn't there, the other trip that he was there, Stokley was there, Kaufman was, that was in October.

By Mr. Harris: 2265

Q. That is the one you have described? A. Yes, sir.

By Mr. von Holst:

Q. Now, Mr. Lord, did you make any revision or change yourself in the agreement that was typed in Judge Davis's chambers as you have described in October? A. No, I made no change. All I did was put the dates in, and I possibly, when it was executed, I think, if you have a copy of it I can show you what writing of mine is on there—not on that.

Q. Well, I haven't anything——

2266 *Thorn Lord—For Amici Curiae—Direct*

Mr. Neuman: Now, wait, the Master has, I think you have the original copy.

By Mr. von Holst:

Q. But, at any rate, you did not take the agreement and put in any provisions in the body of it at all? A. No, sir.

Q. In your subsequent talk with Judge Davis, wherein the question of these taxes, these additional taxes, came up, did Judge Davis mention to you that he had made any changes in the agreement? A. No, sir.

2267 Q. Now, Mr. Lord, I show you a photostat of an instrument that I will ask to be marked Amici Exhibit 75 for Identification, and ask you if that appears to be a photostatic copy of the agreement which you have described as having been executed by the Stokleys at Mount Dora.

(Photostatic copy of agreement dated November 25, 1935, between Morgan S. Kaufman, party of the first part, and Charles L. Stokley and Delta Stokley, his wife, party of the second part, was marked Amici Exhibit 75 for identification.)

A. Yes, this is a photostatic copy of the agreement that was executed at Mount Dora. I recognize what appears to
2268 be a date, the 25th, in ink, as my writing.

By Mr. von Holst:

Q. And is that all of your writing that appears on that instrument? A. That is all on the pages that I am looking at, yes, and here is the back.

Q. So the only thing that you added was to fill in the date in your own handwriting,—— A. That is correct.

Q. —is that right?

Mr. von Holst: I think we better offer this in evidence as Amici Exhibit 75.

The Master: I wonder if you would note where that came from, so it could be returned.

Mr. Thiess: I might put on there that that came from envelope number 1 of the papers in the custody of the Master.

The Master: That is right.

(Amici Exhibit 75 for identification marked Amici Exhibit 75.)

By Mr. von Holst: 2270

Q. I think you mentioned the fact, Mr. Lord, that when you arrived at Mount Dora Mr. Stokley had this instrument, Amici Exhibit 75, and that he gave you some other deeds? A. Yes, sir.

Q. Now, I show you Amici Exhibit 45, which is a certified copy of an instrument as recorded in Lake County, Florida, and ask you if that is a deed which you picked up from Mr. Stokley. A. If the Master please, I don't think I feel justified in testifying to something that is a copy of a record in the Clerk's Office. My recollection is vague enough without taking those chances.

Q. In other words, you don't—— A. No. If you show 2271 me——

Q. —recognize this? A. —a photostatic copy of it I will attempt to have it refresh my recollection, but I am not going to, in a situation as complex, and that happened as long ago as this, I am not going to attempt to identify something that is not a copy of something. I am sorry, I would like to—I don't want to be captious about it.

Q. I appreciate your position, Mr. Lord, and I wouldn't show you this if we had the other. A. Yes.

Q. That is the only reason I did. A. That is the reason I wanted to see that other exhibit.

Q. Yes. Well, we do not have the original deed. Now,——

By the Master:

Q. That has been certified, has it not? A. No, sir, this is a copy of the records of the Clerk of the County. In other words, it is simply——

Q. I understand that,—— A. —taken from their records.

Q. —but has it been certified by the Clerk?

Mr. von Holst: Yes, sir.

The Master: And it has been offered in evidence.

Mr. von Holst: Yes, sir.

The Master: Well, it is on the record.

2273 The Witness: Well, I can't say, sir, because I recognize things——

Mr. Harris: It is a copy of what is on the records.

The Witness: I can't recognize this as a copy of the document.

The Master: No, I understand that.

The Witness: I don't think it is fair to either you or myself to ask me that.

By Mr. von Holst:

Q. Well, you did pick up some deeds,—— A. Yes.

Q. —did you? Now, then, you just tell us what you, to
2274 your best recollection, picked up and recorded by way of deeds. A. I know that I recorded——

——Q. Right. A. I recorded a deed given me by the solicitor in the presence of the town officials at the official meeting in Mount Dora.

Q. Now, that deed—— A. That was a warranty deed from the Town of Mount Dora to Morgan Kaufman.

Q. Right. A. I recorded that.

Q. Yes. A. And left that with the Clerk, after paying the proper fees.

Q. Yes, sir. A. I recorded another deed which referred to his Pet Grove, and I recorded another——

Q. Now, wait a minute, that deed that referred to the Pet Grove was from whom, to whom? A. That deed was from Stokley and his wife to Kaufman.

Q. Yes. A. And as I recall it, I recorded a third paper, which was also from Stokley and his wife to Morgan S. Kaufman.

Q. And that third paper, do you recall what kind of a deed it was? A. It was a quit-claim deed—there were two, as I recall it, there were two quit-claim deeds and one warranty deed, and there were three deeds in all that I recorded.

The Master: In addition to—— 2276

The Witness: At any rate, sir, the property that I had—the property, the deeds covered the property that the Town of Mount Dora was deeding directly to Kaufman and the Pet Grove and the houses.

By Mr. von Holst:

Q. Which deed was from the Stokleys—— A. Yes, sir.

Q. —to Kaufman? A. Yes, sir.

Q. Well, Mr. Lord, then, as I understand it, you recorded three deeds? A. That is my recollection.

Q. A warranty deed from the Town of Mount Dora to Mr. Kaufman, one, a warranty deed from the Stokleys to Mr. Kaufman—— A. No, no—— 2277

Q. —on the additional security—— A. —it was a printed form, printed Florida form of quit-claim deed, as I recall it, but, of course, those papers that I recorded, of course, are a matter of official record in Florida, and they were all recorded at the same time and on the same date, and, again, I say if I could see them I can refresh my recollection.

Q. Well, I was just wondering if I could—— A. But I recorded, I recorded the deeds, a warranty deed from the Town of Mount Dora to Morgan S. Kaufman, covering the property on which the taxes were being compromised. That is one thing.

2278 *Thorn Lord—For Amici Curiae—Direct*

Q. Yes. A. The second thing I recall recording was a deed, a quit-claim deed from Stokley and his wife to Kaufman covering what he called his Pet Grove, and if I remember correctly, there was a second deed——

Q. Third?

By Mr. Harris:

Q. Quit-claim? A. A third one covering the property across the town, which was the houses?

Q. Was that a quit-claim, too, the last one? A. As I recall it, sir.

2279

By Mr. von Holst:

Q. Mr. Lord, may I just refresh your recollection and ask you this question? Didn't the Stokleys quit-claim to Kaufman the same property—— A. Yes.

Q. —that the Town of Mount Dora—— A. That is probably so.

Q. That is one of these quit-claim deeds? A. That is it.

Q. And this other deed, and this other deed to the property may have been a warranty deed, may it not? A. It may have.

Q. Yes, and if the record shows that it is a warranty
2280 deed, I suppose it was? A. Yes, I am simply testifying from——

Q. That is all we want. A. I mean, whatever the record shows is what I recorded there that day, and I recorded all the deeds in reference to the whole transaction between the Stokleys and Kaufman.

Q. Do you know who prepared the deeds that you recorded? A. No, sir,—well, I know who prepared it, the Town of Mount Dora did, the solicitor.

Q. The solicitor? A. Whose name I don't recall. I would recall it——

Q. Mr. Cogley? A. Mr. Cooley.

Q. And the other two, do you know who prepared those? A. I do not, sir. Those were given to me by—given to me in Mr. Cooley's office.

Q. By whom? A. I think they were given to me by Mr. Stokley.

Q. You were not instructed to make a title search when you went down there? A. I was not, I was instructed that the deeds would be given to me. I had no instructions; I had inquired as to whether or not I was to make the search—of course, I wasn't competent to make the search—and I inquired, I inquired as to whether I was supposed to check 2282
any descriptions, which I didn't consider myself competent to make, and I was told I was not, that that was the purpose of the title policy.

Q. And who told you that? A. Kaufman.

Q. When you returned from your trip to Florida did you report to anyone as to what you did down there? A. Oh, yes, I talked to a great—to several people, I talked to Judge Davis and my wife.

Q. Yes. A. And Miss Kliesh.

Q. But I mean as to the recording of the deeds and the receiving of the check, did you report to Judge Davis about that? A. I told him generally what I had done, yes.

Q. Did you speak to Mr. Kaufman about it after your 2283
trip down there? A. I didn't see Mr. Kaufman.

Q. You didn't see Mr. Kaufman after that trip to Florida? A. No, the next time I saw Mr. Kaufman was at his trial in court, at the first trial.

Q. Did you write Mr. Kaufman after your return from Florida? A. I sent the papers to him that I had.

Q. Did you—— A. To some—my recollection is to some address in New York that I had.

Q. Was there a covering letter? A. I don't recall, sir. We never have been able to find one, anyway.

Q. Now, during the time that you were law clerk for Judge Davis do you remember a case entitled Root Refining Company v. Universal Oil Products Company, reported in 78 Fed. 2nd, 991, which I show you? A. What was your question?

Q. Do you recall that case? A. Yes.

Q. Did you do any of the work which you have described as your regular law clerk's work in connection with that case?

(The witness examined the report.)

2285 Mr. von Holst: I will note that the opinion is by Judge Davis.

A. I recall in this case, when Judge Davis was working on this case—perhaps I can answer your question best this way—that he had told—I recall his telling me in Trenton that this was a very important case and we had a general discussion about it. The only work that I can remember doing on it was to look up some cases which—from which he apparently took these quotations that appear in here of the law.

By Mr. von Holst:

2286 Q. Now, during your work with Judge Davis on that case which you did, did you ever hear him mention the name of Morgan Kaufman? A. No.

Q. Did you at the time know that Morgan Kaufman was an attorney in the case? A. No.

(The witness examined the report.)

A. (Continued) He does not appear as counsel of record.

By Mr. von Holst:

Q. Do you recall when you did this work in connection with the Root case? A. No, I don't. I assume from looking

at the date of the opinion it must have been sometime in the spring of 1935, but I could refresh my recollection if you have a conference memorandum. If I could examine that I could tell you more about it.

Q. We haven't the conference memorandum. A. Because I examined a great number of those memoranda at the time the investigation was going on and was able to identify some of my work in it, but I don't think I was ever questioned about—I don't recall specifically ever being questioned about this case before. I may have been.

The Master: The conference memoranda have never 2288
appeared in any of the previous proceedings, have they?

Mr. von Holst: No, sir.

Mr. Thiess: Not in this case.

By Mr. von Holst:

Q. Do you recall whether there was a conference memorandum in this case? A. I wouldn't know now, no. I assume there must have been.

Q. It is a fact, isn't it, that you have had no previous discussion with myself or any of my partners before your taking the stand today? A. I haven't discussed the case 2289
with anyone, sir, you or anyone concerned with it.

By Mr. Harris:

Q. You certainly have not discussed it with us, either? A. No, sir.

By Mr. von Holst:

Q. Were you present at any conference of the judges in connection with this Root case, that you recall? A. No, sir, I have never been present at any conference with the.

judges. Those were held in Philadelphia and I was never invited to attend one of them.

Q. I think you mentioned the fact earlier in your testimony that Mr. Stokley came up to Trenton twice? A. I believe so, yes, sir.

Q. Now, referring first to the time of the conference in Judge Davis's chambers in October,—— A. Yes.

Q. ——and the period from them to your visit to Mount Dora, had Mr. Stokley been up to Trenton in that interim? A. I am hazy about it, but my best recollection is that he
2291 came up from Norfolk, Virginia, a short time after the October confefence. At that time he and his sons were trucking. He had a son, I believe, in Norfolk, and another son was trucking oranges and produce of different sort from Mount Dora in Stokley's truck to the markets in Norfolk, and my best recollection is that he came up for a very short time after that.

Q. Do you know how soon after the October—— A. I do not, sir.

Q. ——meeting that was? A. I do not. I think this is the first time the question has arisen since then. I don't have really any recollection of it.

Mr. von Holst: No more direct.

2292 Mr. Harris: No cross.

By the Master:

Q. Just a minute, Mr. Lord, I want to ask you one or two things. A. I think the best statement of my recollection of the fact, sir, is contained in the testimony before the Grand Jury, which was, of course, several years ago, which I haven't seen, but the testimony before the Grand Jury in New York City.

Q. Do you know what was done or customarily done with the conference memoranda that were prepared by Judge Davis? A. Yes, sir, they were returned after conferences

and filed in his files at Trenton. We had files in which we kept all of the conference memoranda, also files in which we kept copies of the opinions that he wrote.

Q. Do you actually know about the method of holding conferences in Philadelphia, or was that just what you were told by somebody? A. I have never been to one, no, sir.

Q. Never been to one? A. What I have said I only learned from my experience and from what Judge Davis had told me.

Q. Judge Davis said this? A. I can say there have been occasions when the judges have exchanged their memoranda and sometimes some of them were not returned, because when we were making—when we were making—when we were going over some of these memoranda at the time the investigation started; that is, I was being questioned by the Federal Bureau of Investigation in reference to them, a number of them were missing. 2294

Q. Were you acquainted with Judge Davis before you were appointed? A. No, sir, I was recommended to Judge Davis by the Dean of the Law School at the University of North Carolina. I had never seen him before or heard of him before.

Q. Whereabouts did you live in North Carolina? A. Well, at that time, sir, I lived in Ashville. 2295

(Discussion off the record.)

Mr. von Holst: If the Master please, I think I had better ask the witness to identify this check, if I can.

The Master: Yes.

Mr. von Holst: I had forgot that.

Mr. Harris: We will concede that.

Mr. von Holst: Well, he is here.

By Mr. von Holst:

Q. I show you what purports to be a photostat of the front and back of a check and ask if you can identify that.

(Photostatic copy of check dated November 14, 1935, from Morgan S. Kaufman to the order of B. F. Lord, Atty., in the sum of $10,000.00, was shown to the witness.)

A. The front I recognize and recall as the check that was made out to me—incidentally, it is made out incorrectly, it is made out to B. F. Lord and my name is D. F. Lord, Attorney, and I, recall—I recognize the back of the check by the endorsement, "Pay to the order of the Town of Mt. Dora. B. F. Lord, Atty.", which is in my writing, and that
2297 was the check that I received from Mr. Kaufman.

By Mr. von Holst:

Q. As you have testified? A. As I have testified, and delivered to the authorities in Mount Dora.

Mr. von Holst: I offer that in evidence as Amici Exhibit 76.

Mr. Thiess: Will you also make a note there that that came out of envelope number 1 of the papers in the Master's custody?

(Photostatic copy of check dated November
2298 14, 1935, from Morgan S. Kaufman to the order of B. F. Lord, Atty., in the sum of $10,000.00, was marked Amici Exhibit 76.)

The Master: Are you all through, gentlemen?

Mr. von Holst: Yes.

The Master: We haven't yet fixed on the date for the next hearing.

(Discussion off the record.)

The Master: By the way, are you going to call Mr. Fox?

Mr. Thiess: Well, that depends. Mr. Fox, I understand, is serving a term right now, isn't he?

Mr. von Holst: He can always be called.

Mr. Thiess: We haven't definitely made up our minds. We didn't know what they were going to do about it.

(Discussion off the record.)

The Master: I suggest to you the 19th or the 26th, if you want a Monday, or if you want a Tuesday, either the 20th or the 27th.

2300

Mr. Harris: We will let you know by the 12th. The 10th is on a Saturday.

Mr. Thiess: We better have until the 27th, then.

The Master: 27th, Tuesday; very well, then, we will say Tuesday the 27th, at 10:15, very well, unless there is some reason that comes up before that time.

(Adjourned until Tuesday, October 27, 1942, at 10:15 o'clock A. M.)

2301

2302 **Transcript of Hearing, October 27, 1942**

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Tuesday, October 27, 1942, at 10:15 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

2303 J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois).

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Illinois).

Amici curiae.

ROBERT W. POORE, Esq. (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, Esq. (77 West Washington Street, Chicago, Illinois).

Counsel accompanying *Amici curiae.*

2304

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.)

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey).

JOHN R. MCCULLOUGH, Esq. (100 Broadway, New York, N. Y.)

representing Universal Oil Products Company.

The Master: First, let me say I now produce the originals of Exhibits 11 and 13, which I was requested to obtain from the District Attorney in New York.

Mr. Harris: Mr. Master, referring to the original of Exhibit 11 which you have produced and exhibited to us, I ask the Master to look at this, since the original may not be available at some future time, and see if it does not appear, as was testified to by, I believe, Mr. Lindahl, that the perforation "Paid" stamp cuts through some of the letters in the legend at the bottom of that exhibit, reading: "U. O. P. Co. vs. Crew Levick eq. suit filed 2/20/36". 2306

The Master: Do you care to comment on that, Mr. von Holst?

Mr. Thiess: No.

Mr. von Holst: No, Master, I have none, it appears to be so; but I would move that the original of those two exhibits be marked as exhibits in the case.

Mr. Harris: Well, that is entirely agreeable to us, if the Master can keep them.

The Master: Oh, I think I can. 2307

Mr. von Holst: I should think they should be given the exhibit numbers that the photostats now bear.

Mr. Harris: Well, I think possibly it might be better in order to differentiate them to call them Exhibits 11-A and 13-A.

Mr. von Holst: That is satisfactory.

The Master: Will you mark them, Mr. Rodebaugh?

(Accounting department memorandum dated 3/18/1936, signed by B. G. L., was marked Amici Exhibit 11-A.

Distribution record re the payment of $10,000 to Morgan S. Kaufman, being the back of Amici Exhibit 12, was marked Amici Exhibit 13-A.)

The Master: All right, Mr. von Holst, do you want to examine——

Mr. von Holst: Mr. Mitchell.

The Master: Mr. Mitchell?

Mr. von Holst: And during the course of the examination of Mr. Mitchell we should move for the exclusion of witnesses, and ask that Mr. Kaufman be excused until he is
2309 called.

The Master: Mr. Kaufman, would you mind taking a seat in another room here somewhere?

Mr. Kaufman: Perfectly all right.

JOHN J. MITCHELL, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

2310 Q. Please state your name and present residence. A. My name is John J. Mitchell. My address is Santa Ynez, California.

Q. During the years 1935 and 1936 you were an officer of the Universal Oil Products Company, were you not? A. I was.

Q. And what position did you hold then? A. Vice-president and treasurer.

Q. And where did you reside during those years? A. I resided in Chicago. My home was at 1550 North State Parkway.

Q. You worked in the offices of the Universal on Michigan Avenue, Chicago? A. I did.

Q. You were sometimes in New York, I take it? A. That is right, yes, sir.

Q. I should like to refer you to photostats of some documents, Amici Exhibits 4, 5, 6, 7 and 8. A. Yes, sir.

Q. Now, referring first to Amici Exhibit 8—I beg your pardon, Amici Exhibit 7, which purports to be a photostat of a check in the sum of $25,000.00, payable to the order of Morgan S. Kaufman, the check being dated October 18, 1935, is that your signature? 2312

(The witness examined the exhibit.)

A. It is.

By Mr. von Holst:

Q. Referring to these other documents, Amici Exhibits 4, 5, and 6, did you see the originals of these documents before testifying here this morning? A. I saw the original of this document (indicating).

Q. That is—— A. It has my initial on it.

2313

By Mr. Harris:

Q. Which one is that? A. That is the requisition.

Mr. von Holst: Amici Exhibit 4.

The Witness: Requisition for the check.

Mr. von Holst: Amici Exhibit 4.

By Mr. von Holst:

Q. Did you see Amici Exhibit 5?

Mr. Harris: You mean the original?

Mr. von Holst: The original.

2314 *John J. Mitchell—For Amici Curiae—Direct*

A. I do not believe so; not to my knowledge.

By Mr. von Holst:

Q. And how about Amici Exhibit 6? A. I do not remember seeing that, either.

By Mr. Harris:

Q. What was the question? Did you see it this morning before you testified? A. If I had seen it before I testified
2315 this morning.

Q. Yes.

By Mr. von Holst:

Q. Now, Mr. Mitchell, may I ask you about Amici Exhibit 8, if you ever saw the original of that—— A. No.

Q. —before testifying this morning? A. I do not believe I have.

Q. I call your attention to the fact that Amici Exhibit 4 says that the voucher is to be issued to Morgan S. Kaufman in the sum of $25,000.00 for legal services to date in connection with the Root Winkler-Koch case and pending matters
2316 per authority of Mr. J. J. Mitchell. Do you recall when you gave the authority for that voucher requisition whether you were in Chicago or New York? A. I believe I was in Chicago, but I do not accurately recall.

Q. It has been testified here that this voucher requisition, Amici Exhibit 4, is in the handwriting of Mr. Lindahl. Would that appear to be right to you? A. That would appear to be right.

Q. Can you state whether the authority that you gave to Mr. Lindahl for the issuance of this requisition was oral or written? A. It was oral.

Q. Oral? A. I believe so.

Q. Now, did you initiate the authority for the issuance of this requisition, or did you in turn receive the authority from some other source? A. I received the authority from some other source.

Q. And do you recall who it was that authorized you? A. Yes, Mr. Hiram J. Halle, president of our company.

Q. And where were you and Mr. Halle when he authorized you to authorize the requisition? A. I was on one of my more or less frequent business trips to the New York office, in New York, at that time. 2318

Q. And he told you sometime before the date of this requisition, which is October 18, 1935, to authorize the issuance of the requisition on your return to Chicago? A. That is correct.

Q. What did he tell you at that time in that conversation? Will you give us substantially the substance of what you recall was said? A. Well, Mr. Halle, whenever we had a legal bill, he approved——

Mr. Harris: I move to strike out the answer as not responsive. He is talking now about custom, and the question was, what happened on this occasion?

The Master: Well, just reply to the question, Mr. Mitchell, please. 2319

A. (Continued) Mr. Halle simply instructed me as the treasurer of the company to issue a check in that amount to Mr. Morgan S. Kaufman.

By Mr. von Holst:

Q. Did he tell you why? A. No.

Q. Did he tell you for what services the check was to be issued? A. It was for legal services.

Q. And did he tell you in what case? A. Well, if he did I don't remember it at this time.

Q. I note that the voucher requisition says "Legal services to date in connection with the Root Winkler Koch case and pending matters . . . ." Mr. Lindahl would have received that information from you, would he? A. He might or might not have.

Q. Yes. A. The check being approved by Mr. Halle, on legal matters, when they are approved by Mr. Halle I just act on his approval.

Q. And you don't recall that Mr. Halle mentioned the
2321 Root case—— A. No, I do not.

Q. ——at the time that he authorized this requisition? A. I do not.

Q. How long before the date of the requisition, which is October 18, 1935, did you have this talk with Mr. Halle in New York? A. Well, to the best of my recollection it was on that same trip, and I was only there, I believe, a matter of a few days.

Q. But you are definite, or are you, that you were in New York before the requisition? A. Yes, I was in New York before the requisition.

Q. You were also in New York after the check was is-
2322 sued, weren't you? A. I would have to consult my diary on that. I certainly was after the check was issued.

Q. Yes. A. Because I made frequent trips to New York.

Q. Well, I mean, you took the check with you—— A. No, I did not take the check.

Q. ——to New York, did you not? A. No, I mailed it to Mr. Halle at New York.

Q. Would you consult your diary and see if you have any—— A. When my next trip to New York was?

Q. ——notations of trips to New York about the time of this voucher requisition, October 18, either before or after? A. Yes, I was in New York on the 17th.

By Mr. Harris:

Q. Of October?. A. Of October.

Q. 1935? A. '35, and I was in Chicago on October 18th, and I did not return to New York subsequently until November 8th,——

By Mr. von Holst:

Q. 1935? A. ——according to the diary—yes, sir.

Q. So you were not in New York between October 17th and November 8th,—— A. That is correct. 2324

Q. ——1935. Now, I call your attention to Amici Exhibit 6, Mr. Mitchell. A. Yes, sir.

Q. Are you familiar with that form? It has been referred to here as the distribution record, and is the reverse side of the voucher, which is Amici Exhibit 5. A. Yes.

Q. Do you recall that? A. I recall those forms.

Q. There was a jacket,—— A. Yes, sir.

Q. ——and Amici Exhibit 5 was on one side, and Amici Exhibit 6 was on the other side,—— A. Yes.

Q. ——the reverse. A. Yes.

Q. And this Amici Exhibit 6 has been referred to as the distribution record. A. Yes. 2325

Q. So that the accountants would know where to post —— A. That is right.

Q. ——the item. A. Yes, sir.

Q. Now, you notice at the top here it says:

"To Morgan S. Kaufman
"Check given to Mr. Mitchell."

A. That is right.

2326 *John J. Mitchell—For Amici Curiae—Direct*

Q. You recall that they did give you the check—— A. I do.

Q. ——for twenty-five thousand dollars? A. Yes, sir.

Q. Now, you say you mailed that check? A. I mailed it to Mr. Halle.

Q. To Mr. Halle? A. Yes.

Mr. von Holst: We call upon Universal to produce the letter of transmittal which Mr. Mitchell sent to Mr. Halle enclosing the check.

Mr. Harris: If he sent a letter. You haven't ascer-
2327 tained whether he sent a letter or not.

By Mr. von Holst:

Q. Did you send a letter? A. I don't believe I sent a letter.

Q. You mean that you just put the check in an envelope? A. I just put the check in an envelope, or may have written a personal letter, but I am sure I never wrote any official letter.

Mr. Harris: Well, in any event, Mr. von Holst we, of course, did not know that there was a letter, either, we haven't looked it up, but we will look it
2328 up and if there is one we will produce it.

Mr. von Holst: Yes.

By Mr. von Holst:

Q. Well, it was generally your practice, wasn't it, in transmitting checks or documents to the New York office to send a covering letter so that you would have a record of your own? A. Generally there would be a covering letter.

Q. So if there was no covering letter in this particular instance it would be an exception rather than the rule? A. Unless it was a weekend; generally I came back from New

York at the end of a week and if there was a situation like that I would just take care of it and mail it to Mr. Halle.

Q. According to this calendar, Mr. Mitchell,—— A. Yes.

Q. —for the year 1935—this here (indicating). A. Yes.

Q. Calendar number 3. A. October——

Q. October 17th was a Thursday, is that right? A. Yes, and Friday is the last week day in the office for me.

Q. Yes. A. I probably sent a check, looking over my items for New York, before clearing my desk, and got the check and put it in the mail, and sent it to Mr. Halle. I didn't know it was a Friday, but that is generally the experi- 2330
ence.

Q. Do you recall whether Mr. Halle in your conference in New York told you whether there was any urgency in this matter? A. No.

Q. Did he mention whether Mr. Kaufman was in a hurry for his money? A. No.

Q. Did you have any conference with any other officer, agent or attorney of Universal regarding this payment of twenty-five thousand dollars to Mr. Kaufman? A. No, sir, it was simply a routine instruction by Mr. Halle.

Q. And then you conveyed those instructions to Mr. Lindahl? A. Mr. Lindahl.

Q. Now, were you familiar with the accounting methods 2331
of Universal at that time? A. Generally.

Q. It was generally the practice, was it not, to issue a remittance slip at the same time that a check was issued? A. Well, I am not that familiar with it, Mr. von Holst. I would think so.

Q. Did you ever see these remittance slips that went with checks? A. No.

Q. You never saw any? A. No, because I never sent the checks out, as a rule, or if they came with the check, and whatever attachment that was on, I would mail it on to the New York office for their handling.

Q. Do you know whether a remittance slip was issued in connection with this check? A. No, I don't.

Q. You know what I mean by the remittance slip? A. Well, I suppose a remittance slip would be a receipt.

Q. Well, isn't it a fact that the remittance slip would contain, would be the original of the typewritten matter appearing upon this voucher, Amici Exhibit 5, for instance, so that the person to whom the check was being sent would know what the check was for? A. Well, the checks were so often sent by Mr. Halle with the authorization to send whatever the accounting department would send to me down to
2333 Mr. Halle in New York, and the disposition would be made of it there.

Q. And you do not, or do recall that the remittance slip containing substantially—containing exactly the legend on Amici Exhibit 5 accompanied this check—— A. I do not recall.

Q. —when you sent it? You did not ordinarily have anything to do with the mailing out of checks from the Chicago office, did you? A. Not unless I would happen to be in New York and some—and where it was a matter of convenience, and something came up, I would take care of it—not normally.

2334 Q. At the time, that is, in October, 1935, you were familiar in a general way with the litigation then pending? A. It is difficult to answer—most generally.

By Mr. Harris:

Q. You mean in a most general way? A. In a most—in a most slight general way.

Q. Superficially. A. In other words, there was a great deal of litigation, and that is not my department.

By Mr. von Holst:

Q. Had you then heard of the Root case? A. Yes.

Q. And you knew that, that case had been decided in favor of Universal by the Court of Appeals of the Third Circuit as of that time? A. If it had been, I was.

Q. In your present recollection you do not know whether you were familiar with that fact? A. Well, I was familiar with it when it was rendered.

Q. And you don't remember when it was rendered? A. No, I don't remember when it was rendered.

Q. When Mr. Halle had this conversation with you in New York about paying this money to Kaufman did you ask Mr. Halle what Mr. Kaufman had done in the case? A. No, 2336
I had nothing to do with the legal end of the business.

Q. Well, the reason I asked, Mr. Mitchell, this was quite a substantial payment. A. We made many—I didn't feel it was extraordinary in amount.

Q. Well, were you at that time, in October, 1935, familiar with the attorneys who were handling patent litigation for the Universal Oil Products Company? A. No, sir, I was not.

Q. Didn't you know Mr. Hall—— A. Yes, I knew Mr. Hall.

Q. —at that time? A. I had known him, I knew him prior to that time.

Q. And you knew him as an attorney who was handling patent litigation—— A. Yes, that is correct. 2337

Q. —for Universal? A. Yes, sir.

Q. Actively engaged? A. As far as I knew.

Q. You knew Judge Haight? A. I had met Judge Haight.

By Mr. Harris.

Q. Had you then?

By Mr. von Holst:

Q. As of that time? A. I can't remember having met him at that time.

2338 *John J. Mitchell—For Amici Curiae—Direct*

Q. Well, you knew that Judge Haight also was actively engaged in court in connection with the Universal's litigation? A. That is right, that is correct.

Q. As of that time did you know Mr. Thomas? A. I knew Mr. Thomas, yes, I knew Mr. Thomas.

Q. And he belongs in the same category with Hall and Haight, does he not? A. Well, he has done legal work for us for years.

Q. Did you know at that time of Judge Morris and that he was an attorney for Universal. A. No.

2339 Q. Well, before your talk with Mr. Halle in New York on October 17th—I think you said—— A. That is correct.

Q. —did you know that Morgan Kaufman was an attorney for the Universal? A. No.

Q. And you didn't know anything about what services, if any, he had ever rendered? A. No.

Q. Have you ever met Mr. Morgan S. Kaufman before this morning? A. No, sir.

Q. You never saw him before this morning? A. No, sir.

By Mr. Harris:

Q. This morning, in this court room? A. That is correct, this morning, in this court room.

2340

By Mr. von Holst:

Q. You knew Mr. W. M. Behrens in 1935 and 1936, did you not? A. Yes, sir.

Q. He was in the New York office then? A. I believe he was.

Q. When you came to New York on this occasion on October 17th and talked with Mr. Halle about this payment to Kaufman did you see Mr. Behrens? A. Well, I certainly saw Mr. Behrens during my visit in New York.

Q. Did you have any talk with him about this—— A. No, sir.

2341

Q. Transaction? A. No, sir.

Q. Did you ever know anything of other payments which thereafter were made to Morgan S. Kaufman, I mean after this payment of October 18, 1935? A. Yes, I knew of the—I think it was a payment made in the following March.

Q. That is March of 1936? A. Yes, sir.

Q. Were you in New York in March, 1936? A. I was, sir.

Q. You refer to your memo? A. Yes, sir.

Q. By the way, may I ask you, was that a contemporaneous record that you kept of your trips? A. The Chicago office kept a record.

2342

Q. Oh. A. It is my office diary.

Q. And you obtained this memorandum that you are referring to—— A. Yes, sir.

Q. —from the Chicago office? A. Chicago office.

Q. When did you obtain that? A. Obtained it yesterday.

Q. I see.

Mr. Harris: Well, I think, Mr. von Holst, if I am correctly informed, this is just a transcript——

The Witness: That is correct.

Mr. Harris: —that he made,——

The Witness: From the Chicago record.

2343

Mr. Harris: —or Mr. Behrens made.

The Witness: Mr. Behrens, I asked Mr. Behrens to check with the Chicago office diary and tell me when I was here in the East.

By Mr. von Holst:

Q. When you speak of the Chicago office diary, you mean your own diary? A. No, I mean, our secretary keeps a record of the comings and goings of mine.

Q. I see. A. And I was in New York on—in March 10th.

Q. 1936?

By Mr. Harris:

Q. When was that? A. March 10, 1936.

By Mr. von Holst:

Q. And did you have a conversation with Mr. Halle—— A. I believe I did.

Q. —on this occasion? A. Yes.

Q. That is to say, when you were in New York—— A. When I was in New York.

Q. —on March 10, 1936. Can you state substantially
2345 what was said, what Mr. Halle said to you—— A. Well, I can't state substantially what was said because I don't remember, but I do remember I left that weekend on a Grace Liner for a trip to California through the Canal and before leaving I believe there was a payment of ten thousand dollars we were to make to Mr. Kaufman and I believe I phoned Chicago and arranged with Mr. Lenske, our comptroller, to take care of that, subject to Mr. Behrens' instructions, with Mr. Halle's approval, when he received it.

Q. The instructions were from Mr. Halle, is that right? A. That is correct.

Q. And did Mr. Halle tell you what suit that payment was to be made in? A. No, sir, not as I remember.

2346 Q. He just told you to authorize a check—— A. That is right.

Q. —to Mr. Kaufman? A. That is right.

Q. For ten thousand dollars? A. Yes, sir.

Q. Now, is that all you recall about that conversation, about your instructions from Halle? A. That is all I recall.

Q. Well, now, refreshing your recollection from a document that has been marked Amici Exhibit 9,—— A. Yes.

Q. —which is inter-office correspondence,—— A. Yes.

Q. —you recognize Mr. Lenske's initials here?

(The witness examined the exhibit.)

A. I do.

By Mr. von Holst:

Q. And this is a letter that Mr. Lenske wrote to Mr. Behrens? A. Yes.

Q. And this says:

"While Mr. Mitchell was in New York last week, he telephoned me and among other things he mentioned the fact that Mr. Halle had approved the payment of $10,000.00 to Mr. Morgan S. Kaufman. He further stated that you would write me a memorandum and asked that we do *not* draw the check until we heard from you." 2348

A. Yes.

Q. That "he" means you, I take it? A. No, I take it not.

Mr. Harris: Yes, I think so.

(The witness examined Amici Exhibit 9.)

The Witness: Well, yes, "he further stated"—that is correct, that is correct, yes, as I read it.

By Mr. von Holst: 2349

Q. In other words, that you told Lenske, apparently over the telephone—— A. That is correct.

Q. —that you would write Lenske a memorandum? A. No, let's see.

Mr. Harris: Mr. Behrens.

The Witness: That was Mr. Behrens, written to Mr. Behrens:

"While Mr. Mitchell was in New York last week, he"—Mr. Mitchell—"telephoned me and among other things he"—Mr. Mitchell—"men-

tioned the fact that Mr. Halle had approved the payment of $10,000.00 to Mr. Morgan S. Kaufman. He"—Mr. Mitchell, that means——

Mr. von Holst: That is right.

The Witness: —"further stated that you would write——

By Mr. Harris:

Q. That you; Mr. Behrens? A. "... that you"—Mr. Behrens—"would write me a memorandum and asked that
2351 we do not draw the check until we heard from you."

Q. And "me" is Mr. Lenske? A. And signed, initialed, by Mr. Lenske.

Q. "Me" is Mr. Lenske, isn't it? A. That is right.

The Master: "we," that is.

The Witness: "that we" it says there.

Mr. Harris: "would write me"—me, Mr. Lenske.

The Master: "that we do not draw the check."

By Mr. von Holst:

Q. Now, do you recall anything of your conversation over the phone with Mr. Lenske about that memorandum? A.
2352 No.

Q. Do you recall why they were not to draw a check—— A. No.

Q. —until they heard from New York? A. No, I do not.

Q. That does not refresh your recollection in any respect? A. No, I had two sick children at the moment with whooping cough, and I had to do my best, trying to get to a boat, not knowing it was whooping cough, talking to the doctors, I was merely trying to clear up my affairs so I could get away.

Q. Would you say that your instructions regarding this memorandum came from Mr. Halle? A. Yes, I would say

2353

so, I don't know—yes, I think that is correct, that would be correct.

Q. Now, I show you Amici Exhibit 28, which is a photostat of a check of December 2nd, 1936, payable to the order of Morgan S. Kaufman, in the sum of ten thousand dollars. That check is signed by you, is it not?

(The witness examined Amici Exhibit 28.)

A. It is.

2354

By Mr. von Holst:

Q. And that represents a payment made to Mr. Kaufman in December of 1936? A. Yes, sir.

Q. Now, do you recall anything about that check? A. No, sir.

Q. Did you at the time see the voucher requisition, Amici Exhibit 25, which was the authority for the issuance of that check?

(Amici Exhibit 25 was shown to the witness.)

A. I do not believe I did.

2355

By Mr. von Holst:

Q. Well, did you know at the time what that check was for? A. I presume it was the payment to Mr. Kaufman for legal services, that is all I knew it was for.

Q. Well, when you signed the check did you ascertain what services, what legal services it covered? A. No, sir.

Q. Do you recall having any conversation with any agent, attorney or employee of Universal at the time you signed this check, Amici Exhibit 28? A. I do not recall any.

Q. When you signed this December check, Amici Exhibit 28, did you ascertain how much money had been paid to Mr. Kaufman in all up to that time? A. No, sir.

2356 *John J. Mitchell—For Amici Curiae—Direct*

Q. Now, at the time you signed this check, Amici Exhibit 28, do you recall seeing a pencil memorandum, a photostat of which is in evidence here as Amici Exhibit 37?

(Amici Exhibit 37 was shown to the witness.)

A. No, I do not.

By Mr. von Holst:

Q. Did you ever see this memorandum before I showed it to you? A. Not to my——

2357 Mr. Harris: You mean Exhibit 37?

Mr. von Holst: Yes.

A. Not to my knowledge.

By Mr. von Holst:

Q. I call your attention to the fact that Amici Exhibit 11, which is the voucher requisition for the March, 1936, payment of ten thousand dollars, says that it is for "retainer 1936 for services rendered and to be rendered in connection with our pending Litigation per phone conversation between L. M. Healy & B. G. Lenske." A. Yes.

Q. And that Amici Exhibit 25, which is the December
2358 payment, says that it is "in full for services for the year 1936 and for retainer for 1937 as per telephone conversation Healy-New York at request of HJH". A. Yes.

Q. Now, I would like to ask you whether you noted at the time of the December payment that Mr. Kaufman had already been paid for 1936? A. I did not notice it. I was out on the high seas when this check was mailed.——

Q. Which check? A. —and I am not familiar—(indicating).

Q. Amici Exhibit 11? A. Yes, that is dated after I had left New York. No, I wouldn't be familiar with that, and I do not know anything about the reference made here.

Mr. Harris: Which one?

By Mr. von Holst:

Q. In Amici Exhibit 25? A. Yes, sir.

Mr. Harris: 25, yes.

By Mr. von Holst:

Q. Well, as vice-president and treasurer during those years—— A. Yes, sir.

Q. —was it not part of your duty to check on expenditures? A. Not on legal expenditures. 2360

Q. You had nothing to do with that? A. I had nothing to do with that at all.

Q. And so far as you know, who was the only one who had anything to do with that? A. My authority came personally from Mr. Halle, whenever I issued checks or signed checks for that purpose.

Q. Now, aside from these three transactions, that is, the October, 1935, and the March, 1936 and the December, 1936 payments to Kaufman, did you know of or have anything to do with any other payments—— A. I had nothing——

Q. —to Mr. Kaufman? A. —to do with any other payments, no, sir. 2361

Q. Prior to testifying this morning have you talked with any officer, agent or attorney of Universal regarding the subject matter on which you have been examined? A. I have talked to Mr. Behrens.

Q. And have you read any of the testimony heretofore taken in these proceedings? A. No, sir.

Mr. von Holst: Direct examination closed.

Cross Examination by Mr. Harris:

Q. Mr. Mitchell, had you seen any of these documents which Mr. von Holst has shown you today prior to—except

those that you signed, don't you know, except those two checks which you signed—prior to Mr. McCullough showing you photostats of them this morning? A. I haven't seen any of them except those which I signed or initialled.

Q. Until Mr. McCullough showed them to you this morning—— A. That is correct, sir.

Q. —at breakfast? Now, referring to Exhibit 11—no, I am sorry; it is the first payment in 1935, I beg your pardon, referring to Exhibit 4——

Mr. von Holst: Just a minute, Mr. Harris.

2363 Mr. Harris: Well, I can pass this one up to him.

Mr. von Holst: All right.

By Mr. Harris:

Q. My recollection is that you testified that you did not recall giving the instructions to Mr. Lindahl to issue the check mentioned therein against the Root case? A. I do not.

Q. That is merely a matter of recollection, is it? A. That is just a matter of recollection.

Q. You wouldn't deny that you had passed that information on to him? A. No, I wouldn't.

Q. And would it not have been the normal procedure for him to have obtained that information from you at the time
2364 you directed the check to be issued? A. It would be natural that he would have some instructions in regard to it, but that is so many years ago that I don't remember.

Q. And you, in that particular case, since you gave him the instructions to issue the check, it would have been normal for you to have told him what the matter was about? A. I presume so, he wouldn't issue a check without some knowledge, what it is about, for his file.

Q. Now, referring to Exhibit 28——

Mr. Harris: Have you got Exhibit 28 handy Mr. von Holst?

Mr. von Holst: Yes.

(Amici Exhibit 28 was shown to the witness.)

By Mr. Harris:

Q. You signed that check,—— A. I did.

Q. —you say, without any instructions from anyone, it was just a routine signature? A. That is a routine signature as far as I know.

Q. And would that have normally been accompanied by the voucher requisition which is Exhibit 25? A. Yes.

Q. Would Exhibit 25 normally have been attached to the 2366
check? A. I think it would.

Q. At the time you signed it? A. I think it would.

Q. And that would have given you the information at that time upon which you relied—— A. Yes.

Q. —in signing the check? A. Yes, the request of H. J. H. would give me that.

Q. Yes, but the signatures,—— A. Yes, sir.

Q. —what are these signatures? Mr. Lenske, and who was the other one? Who is the first line? A. Let's see, the check?

Q. No, no, on the requisition.

(The witness examined Amici Exhibit 25.)

2367

The Witness: I would be darned if I know who that is.

Mr. Behrens: MacCauley Carter?

The Witness: Oh, yes, MacCauley Carter.

By Mr. Harris:

Q. Mr. MacCauley Carter's signature? A. That is right.

Q. And Mr. Lenske's signature? A. That is right.

Q. And you would have regarded that as a sufficient identification of the matter to warrant your signing the check—— A. I would.

2368 *Morgan S. Kaufman—For Amici Curiae—Direct*

Q. —without knowing any more about it? A. I would, indeed, knowing Mr. Carter.

By the Master:

Q. Mr. Mitchell, I think you said that you were given instructions in New York orally by Mr. Halle to pay twenty-five thousand dollars—— A. That is right.

Q. —to Mr. Kaufman. Didn't you make any memorandum of that? A. No, sir,—if I did, I wouldn't have kept it, because I just went right through on a telephone call to Mr. Lenske and to clear it up——

2369 Q. You didn't draw the check until you got back—— A. I didn't draw the check, sir.

Q. —to Chicago? A. The March payment, I wasn't here.

Q. You simply gave instructions—— A. I simply gave instructions that a check would be——

Q. Yes. A. —forthcoming and to accept the order for it when Mr. Behrens—upon hearing from him.

(Discussion off the record.)

Mr. von Holst: That is all, as far as we are concerned.

2370 Mr. Harris: That is all.

The Master: That is all, Mr. Mitchell.

MORGAN S. KAUFMAN, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thiess:

Q. Mr. Kaufman, will you please give your name, present residence and profession? A. Morgan S. Kaufman, Scranton, Pa.

Q. And your profession? A. Lawyer. I am not working at it, however, just now.

Q. Are you at the present time an attorney for Universal Oil Products Company? 2371

Mr. Harris: Mr. Kaufman, would you mind sitting in the center of the table, so I can see you?

The Witness: Certainly. I beg your pardon?

By Mr. Thiess:

Q. Are you at the present time an attorney for the Universal Oil Products Company? A. Well, I don't really know how to answer that question. There is a case pending in which I am counsel of record, and I assume that I am still counsel of record in that case. 2372

Q. Your appearance has never been withdrawn in that case,—— A. No, sir.

Q. —Crew Levick case? A. No, sir.

Q. Have you received any payments from Universal since December 2nd, 1936? A. I don't think I have.

Q. And you are testifying here under subpoena, are you not? A. I assume so.

Q. Would you please state when you were first advised that you were to testify in these proceedings? A. Why, about ten days ago. 2373

Q. Your first notification was as the result of the serving of the subpoena on you? A. Yes, sir.

Q. Have you at any time prior to your appearance here as a witness talked with anybody regarding your testimony in or the subject of these proceedings? A. I have not—with the exception of yesterday morning.

Q. And whom did you talk to yesterday morning? A. Mr. O'Mara.

Q. And where did you have this conversation? A. Bellevue-Stratford Hotel.

Q. Now, you were in Philadelphia, were you not, on May 12th or 13th of 1942, this year? A. I assume so.

Q. I believe I saw you at the Bellevue-Stratford at that time, while these proceedings——

Mr. Harris? When was that?

Mr. Thiess: May 12th or 13th of 1942, this year.

The Witness: I assume so.

By Mr. Thiess:

Q. Did you know at that time that these proceedings
2375 were going on? A. I didn't, no. I suspected something going on when I saw you. You have attended every criminal case, every trial and everything else in the matter, so I assumed there was something doing around when you were around.

Q. Have you read the transcript or any of the transcript of the proceedings to date in this case? A. I have not.

Q. Mr. Kaufman, when were you admitted to the bar? A. 1905.

Q. And in 1905 after admission to the bar did you begin the practice of the law immediately? A. Yes, I was with Willard, Warren and Knapp for a while. Judge Willard was on the Superior Court of Pennsylvania, and Judge
2376 Knapp was an Orphans' Court judge at that time. Major Warren was a very prominent lawyer at Scranton when I came in.

Q. And that practice was a general practice, was it? A. Yes.

Q. And how long did you stay with Willard, Warren and Knapp? A. Oh, about six or eight months or a year, I forget just what it was.

Q. And thereafter did you—— A. I formed a partnership with a man by the name of Manning.

Q. Manning? A. Manning, under the firm name of Manning and Kaufman.

Q. And did that partnership last for some considerable time? A. No, a couple of years.

Q. And was that general practice, also? A. Yes.

Q. And thereafter did you form another partnership? A. Not for about ten years or so. I was practicing law myself.

Q. And in the general practice? A. Yes, sir.

Q. And then did you form another partnership? A. I did.

Q. What was that? A. Kaufman and Mattes.

Q. Kaufman and Mattes, and did that partnership last for some considerable time? A. Yes.

2378

Q. Is that in existence today? A. No, it is not.

Q. When did that terminate, do you know? A. I think around in the early '30's, '30 and '31.

Q. And thereafter did you form another partnership? A. I had a partnership—we took in a young man by the name of J. Julius Levy, the firm name became Kaufman, Mattes and Levy.

Q. And did that partnership last up to the present time? A. No.

Q. When was that dissolved? A. Levy retired, I just don't recall, he was there only a few years and he retired.

Q. And did the partnership of Kaufman and Mattes continue? A. It did.

2379

Q. And that continued until when? A. About the early '30's.

Q. And after that did you practice law by yourself or——

A. I did.

Q. No partnership? A. No.

Q. Mr. Kaufman, can you fix a little bit more definitely just when the partnership of Kaufman and Mattes terminated? A. I can't recall that date offhand.

Q. Was there a written agreement with respect to that partnership? A. No.

Q. Do you place it definitely in the year—— A. No.

Q. You have no idea just when that was—— A. It was around '30, '31, something like that, I can't recall.

Q. Might it have been later than '31 or earlier than '30? A. It is around '31, I should judge. I think it was '30, '30 or '31, something like that.

Q. Would you be able to fix that definitely from your records? A. I have no records; I can fix it from—I suppose I can—in some form, try to fix it perhaps a little more definitely.

Q. Would you endeavor to do so? A. Well, if I get up
2381 to Scranton any time, I will.

Q. Can you give me the date when you were admitted to practice in the Third Circuit? A. I think it is around 1910 or something like that.

Q. And when were you admitted to practice in the Court of Appeals of the Third Circuit, if you remember? A. I say, in 1910.

Q. 1910? A. Might be before, it might be a year later. It is around 1910. I know I tried some cases, argued a case there in 1910, or 1909, or '11.

Q. And do you remember when you first appeared before the Court of Appeals for the Third Circuit? A. I say, it
2382 was around 1910.

Q. Well, you were admitted at the time that you first appeared before that court personally? A. Well, now, they —at that time they had a different rule of admission, I think, than they have today. I don't know whether they had records or not. We tried to check up on the records some year or so ago, and they couldn't find records of a great many people that were admitted at that time.

Q. But you haven't any independent recollection of when you first appeared before the Court of Appeals of the Tenth Circuit? A. I don't think I have.

Mr. Harris: Of the Third Circuit.

Mr. Thiess: Of the Third Circuit, I mean.

By Mr. Thiess:

Q. Were you ever prior to 1932 retained in any case in which a patent was involved in any way? A. No, sir.

Q. Prior to 1932 did you ever have a case involving in any way the subject of cracking or the refining of petroleum? A. I did not.

Q. Have you had any engineering, chemical or mechanical experience? A. No, sir.

Q. Technical schooling? A. No, sir. 2384

Q. What was the first case involving a patent in which you were retained? A. The Universal Oil.

Q. Who retained you? A. Now, just a minute, I said Universal—I don't recall whether the Tri-Ergon case was on at that time or not. That was a very large patent case. I can't recall whether—it was around that time, in that time.

Q. And do you remember that you were retained in the Root case prior to the time that you were retained in the Tri-Ergon case? A. About the same time. It may have been a few months one way or the other.

Q. You have no definite recollection? A. I have no definite recollection. 2385

Q. Who retained you in the Root case? A. In the Root case?

Q. Yes. A. Mr. Belknap.

Q. Now, do you remember who retained you in the Tri-Ergon case? A. Yes, sir.

Q. Who retained you? A. Mr. Fox.

Q. Mr. Fox. A. And Mr. Reass, his counsel. I think Mr. Reass retained me originally, and then I met Mr. Fox.

Mr. Harris: Reass, by the way, is spelled R-e-a-s-s.

By Mr. Thiess:

Q. That is Mr. Reass, of the firm of Becker, Reass, Hirsh and Newman? A. Something like that—Hirsh, Newman, Reass and Becker.

Q. Did you know Mr. Fox prior to the time that you were retained by this firm? A. He said I met him, it may have been that I knew him, I met him, but I can't recall it. He testified that he had; at some funeral here of Jules Mastbaum, a movie firm here in town that I knew very well, and I attended his funeral, and he testified that he met me at
2387 that time.

Q. Well, have you any recollection——. A. I have no recollection.

Q. —of knowing Mr. Fox before you were retained? A. No.

The Master: What Mr. Fox is this?

Mr. Harris: William Fox.

Mr. Thiess: William Fox.

By Mr. Thiess:

Q. If you do not remember that you had met Mr. Fox before that time, do you remember how you happened to be
2388 retained in this Fox litigation? A. In the Fox case, you are talking about?

Q. Yes.

Mr. Harris: Tri-Ergon.

Mr. Thiess: I mean, in the Tri-Ergon case, I beg your pardon.

The Witness: How I happened to be retained?

Mr. Thiess: Yes.

The Witness: You mean who retained you, or——

Mr. Thiess: Yes, who retained you?

The Witness: I said Mr. Reass retained me.

By Mr. Thiess:

Q. Were you acquainted with the members of that firm? A. I knew Mr. Reass.

Q. Do you remember whether your retainer by Mr. Reass, of this firm was through the suggestions of Mr. Fox—— A. I couldn't tell you.

Q. —or of the firm? You have no knowledge of why you were retained?

Mr. Harris: Just a minute, I don't know——

2390

By Mr. Harris:

Q. Do you know why you were retained? A. Well, I know they tried the case in the Middle District of Pennsylvania, and, of course, they had to have counsel there, and I suppose they selected me as counsel.

The Master: I understood the witness to say first that Mr. Fox had retained him.

The Witness: No.

The Master: Or Mr. Reass.

The Witness: Mr. Reass, at the same time Mr. Fox was there, I talked to Mr. Reass first, and then Mr. Fox was there.

2391

The Master: Yes.

The Witness: And they both practically retained me, actual retaining.

The Master: Well, that is what I understood you to say.

By Mr. Thiess:

Q. Do you remember the circumstances of that retainer? A. You mean——

Q. Who called you, or the conversation. A. Yes, Mr. Reass called me.

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Q. Do you remember the substance of the conversation at the time of your retainer? A. Yes, he called me down, told me that he wanted to talk to me on a very important matter, that Mr. Fox would be there, in connection with the Tri-Ergon case, that they were about ready to start in Pennsylvania, is the substance of that. It is a matter of a good many years ago. I can't remember the exact——

Q. Do you remember whether the bill of complaint had been filed at that time? A. No, it had not been filed.

Q. And did you have anything to do with the drafting
2393 of that bill of complaint? A. I did not.

Q. Were you active in the Tri-Ergon case? A. I sat during the trial of that case.

Q. Did you take an active part in it? A. No, I didn't, except in a general way. I—I wouldn't say I took an active part, no. They had, I think they had eight or ten lawyers on either side, so I didn't take any active part.

Q. Well—— A. There were numerous lawyers that took no active part in the case.

Q. Do you know the lawyers who actually tried the case? Were they patent lawyers? A. Yes.

Q. Do you remember who they were? A. Firm of lawyers located in——

2394 Q. Was it Ward, Crosby and Neal? A. Ward, Crosby and Neal, and they had other lawyers there, I can't remember.

Q. They were New York lawyers? A. Yes.

Q. Now, you have stated that you were retained by Mr. Belknap in the Root case? A. Yes.

Q. Will you just give us the details of how you came to meet Mr. Belknap and be retained by him in this Root case? A. Well, I was called by Mr. Belknap, I was in Scranton, he called me on the phone and told me who he was, told me he was general counsel for the Universal Oil Company, and wanted to know when I expected to be in Philadelphia. I told him I anticipated going down the following day, which

I did, and he asked me at what time, and I told him I would be there around two o'clock.

That was substantially the conversation over the telephone.

Q. About when was this? A. This was, I would say, in the early spring, it must have been in the latter part of March or the early part of April. That would be my best guess.

By Mr. Harris:

Q. What year? 2396

By Mr. Thiess:

Q. Of 1932? A. 1932.

Q. Now, did you come to Philadelphia to meet Mr. Belknap? A. I did.

Q. And when you came to Philadelphia what did you do? A. I came to Philadelphia, I had lunch; I asked the bell boy to page Mr. Belknap, which he did. He came over and I introduced myself to him and he introduced himself to me, and I think he gave me his card, and we sat down and we started to talk.

Q. And what hotel was this, Mr. Kaufman? A. Bellevue-Stratford. 2397

Q. Did you register there at the time? A. No, I don't think I did, because I drove down and I was going to drive back. I had someone I wanted to see, I can't recall who it was for the moment. It is only a three-hour ride, three hours and a half, three-hour ride to Scranton.

Q. Was anybody else present in this conference besides you and Mr. Belknap? A. No, sir.

Q. And how long did the conference last? A. Oh, I would say an hour or an hour and a half.

Q. Will you please state what was said at this conference between yourself and Mr. Belknap respecting your retainer? A. Well, the substance of it was that he was general counsel

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for the Universal Oil Company. He outlined to me in detail what the Universal Oil Company was. He went into a great length of what they had done, and described the patents, in all particulars, and what they were doing, and he told me about the very important litigation they had in Wilmington, Delaware, known as the case of the Universal Oil versus Root Refining, some other concern, he mentioned some other case, I can't just think of it now, and after—we went on with a great discussion and he said to me, "Do you represent any oil company?"

2399 I said, "No, I do not." I said, "I represent some gas stations, if that is what you mean, along the line."

He said, "No, oil companies."

I says, "No, I don't, I don't represent any."

He said, "Of course, it is understood," he said, "that if we retain you that you will not represent any other oil company."

I says, "That is clearly understood, I understand that perfectly."

He then said to me, "If there is anything that comes up in Pennsylvania or anywhere else that our counsel . . ."—and, by the way, he named a great—named all the counsel, a great many of the counsel that were representing the pat-

2400 ents, of which I only knew one, Judge Haight is the only man I knew as he mentioned the names, and he said, "We would expect you to be in readiness, hold yourself in readiness if anything comes up, why, they can call upon you at any time."

I said, "That is understood very distinctly"; and we then talked about—I think he talked to me about a retainer. He asked me about whether I wanted an annual retainer.

"Well," I said, "that is entirely up to you."

"Well," he said, "I think you will fare very much better if you wait until this case is disposed of down there at Wilmington."

"Well," I said, "that is entirely up to you, it doesn't make a particle of difference to me."

And he said, "Well, when you get to New York you give me a ring," he gave me his telephone number, "and we will be in touch with each other from time to time."—substantially that.

I haven't given you the details of everything, but we had this long talk, and this took place, I think, over ten years ago, and I am giving you my best recollection.

Q. Now, you say as to the attorneys he mentioned the only one you knew was Judge Haight. A. The only one that I knew at that time was Judge Haight.

Q. Yes. A. Yes, sir.

Q. And when had you met Judge Haight before that? 2402
A. Oh, I met him perhaps a year or two before that.

Q. In connection with other litigation? A. No, I met him—I think the first time I met him was with Judge Buffington and Judge Stone—either Judge Stone—maybe he was an attorney, but I thought he was a judge from somewhere, I can't recall, his father was a United States Senator in the West, I recall that now, and he came up there and we spent a few minutes together there and we talked about New Jersey, and so forth, and Pennsylvania, and we were discussing about—I think they had some book that they were discussing, that Stone had written, the father of this man that had been—that is how I know——

Q. And this was sometime, as you place it, in 1931? A. 2403
It may have been '30 or '31, I can't recall the date, it was before the date that I met Mr. Belknap, because he was the only one I knew at the time.

Q. In this conversation with Mr. Belknap did Mr. Belknap explain to you why it was that he came to you to retain you in this case, or how he came to know you? A. He did not.

Q. Did he say that anyone else had recommended you? A. No, sir.

Q. He made no explanation at all as to how he happened to ask you to accept a retainer in this case? A. No, sir.

Q. What did he tell you about the issues of this Root case? Did he tell you anything about it? A. Well, I can't recall it now.

Q. You don't remember? A. I can't recall, it is only about the cracking process, and so on, I can't recall just what he said there, it is ten years ago, in a casual conversation with a man, I couldn't remember exactly what was said there.

Q. Well, did Mr. Belknap ask you at all about any experience that you have had in matters of the kind that were involved in the Root case? A. He did not.

2405 Q. Nothing said about that? A. Nothing so far as my experience was concerned.

Q. Did Mr. Belknap tell you what he expected you to do in this Root case? A. No, he didn't go into details.

Q. Or did he mention anything at all? A. Only what I have stated here.

Q. Well, did the substance of his conversation amount to—at that time—amount to the fact that you were not to be used as counsel in the Root case, that the retainer was in the nature of a hold-off retainer, while you were not to accept employment from any other oil company? A. You mean at the time——

2406 Q. That you talked to him in 1932. A. I don't understand that question. Pardon me, if I ask you to repeat that question.

Q. I will try to make it clear, try to break it up. Did Mr. Belknap tell you that you were not to be used as counsel in the Root case but that your retainer was a hold-off retainer? A. I didn't so understand it.

Q. Well, what was your understanding? A. My understanding was exactly what he said to me at the time.

Q. Well,—— A. That he retained me, that I was to be retained generally and to look after their matters.

Q. And that you were to be used in this Root litigation? A. He didn't mention the exact words that you say, I as-

supped that from what he said, that whatever was necessary to be done in connection with this matter as well as other matters. He did mention the fact that they contemplated having litigation in Pennsylvania.

Q. Did he—— A. I think he told me that they had no lawyer in Pennsylvania at the time. I am quite sure he said that.

Q. And do you remember what other litigation he referred to that they might have had or contemplated in Pennsylvania? A. Well, I am not sure whether he mentioned the names or not at that time, I wouldn't—I can't recall the whole conversation now. 2408

Q. You have no recollection of this other litigation? A. No.

Q. Now, regarding the date of your retainer in the Root case by Mr. Belknap, did he say anything about the condition of the proceedings in the Root case at the time that he retained you? A. The condition of the proceedings?

Q. Yes, how far the Root case—— A. That they had a matter pending, or case pending, and mentioned the name of the case.

Q. Did he say anything about, that they were trying this case in Wilmington,—— A. No.

Q. —and that they were having hearings? A. Not at that time, not at that time. 2409

Q. Did he tell you what progress had been made in the Root case at that time? A. Not at that time.

Q. Did he tell you that the Root case had actually been filed? A. Yes, I understood that.

Q. But he did not tell you what the present status of the case was? A. He may have, but I can't recall now. He did in a later conversation make certain statements to me about that.

Q. Well, have you any recollection that before the Grand Jury you testified that when you talked to Mr. Belknap

about this case and were retained that he told you that they had got through with the testimony at Wilmington—that they had not gotten through with the testimony in Wilmington and that they were having hearings, and so forth? A. That was told to me over the telephone after that date, during the summer. He asked me to call him, at that time he said, "When you get to New York you give me a ring and we will discuss the case and we will go out for lunch", or something of that sort, and I called him during the summer and he told me that they were progressing with the case.

2411 Q. Now, at what time was that in the summer? A. Oh, sometime in the early summer, I don't recall, sometime during the summer, the early part of the summer.

Q. Do you remember when that call was made at all? A. I do not.

Q. Can't place it as far as month is concerned? A. No.

Q. It is your present recollection, is it, that at the time that you talked to Mr. Belknap at Philadelphia, at the time that you were retained, nothing was said about the status of the case? A. My recollection is that he told me that there was a case pending there. That is as far as he went. I don't think he told me anything about the progress of the

2412 case at that time.

Q. Mr. Kaufman, in the proceedings before the Grand Jury in New York, in February of 1940, were you asked the following questions and did you testify as follows; referring to Mr. Belknap:

"Q. Did anyone ever introduce you to him? A. No.

"Q. He just called you on the phone? A. He called me on the phone.

"Q. Will you describe what took place at that time? A. Well, I met him there and he told me—of course, then he introduced himself to me again, that

he was general counsel of the Universal Oil Company, told me what it was, and went into details concerning the original patent that they had and the successor of the famous Dubbs patent for cracking oil.

"He told me they had a very important litigation in Wilmington, Delaware, at that time. He told me who the counsel were in the case, who their local counsel were, and he wanted to know whether I represented any other oil companies, and I said no. I said I represented some gas companies but don't represent any oil companies.

"Well, he said now, we don't want you to repre 2414
sent any other oil company. He said that is understood.

"I said absolutely.

"And he went on, he talked a great deal about the merits of the case."

Mr. Harris: "We went on".

Mr. Thiess: This——

Mr. Harris: I thought you said "he". In my copy it is "we".

Mr. Thiess: "And he went on . . ."

Mr. Harris: Well, my copy says, "And we went on . . ." 2415

Mr. Thiess: ". . . he talked a great deal about the merits of the case."

Mr. Harris: This says, ". . . we talked a great deal about the merits . . ."

By Mr. Thiess:

Q. (Continued) "He told me who the president of the company was.

"Q. That was the case in—— A. Wilmington, Delaware.

"Q. Do you know the name of that case so that we can identify it? A. The Universal Oil Products vs. Root Refining Company, and he—we talked a great many things, I can't——

Mr. Harris: It's "discussed a great many things".

Mr. Thiess: "we talked a great many things."

Mr. Neuman: Mr. Harris, this is the Master's copy.

Mr. Harris: Yes, I understand.

By Mr. Thiess:

2417 Q. (Continued) "I can't recall just everything that was said——

The Witness: They had a lot of trouble getting that testimony. They had a little girl there putting this down, and we had to stop. Go ahead.

By Mr. Thiess:

Q. (Continued) "but he then told me that he would get in touch with me from time to time, and then just before we finished our conversation he said, 'Now, with reference to a retainer, do you want a retainer now or would you rather wait until the case is over with?'

2418

"And I said well, that is purely up to you.

"He said I think you will fare very much better if you wait until the matter is over.

"Well, that is substantially all that took place, and he talked a great deal about the matter of the patent and he told me about how far the case had proceeded. They hadn't got through with the testimony, and they were having hearings, and so forth I think he told me at the time."

Mr. Harris: "I think he told me".

Mr. Thiess: "I think he told me at the time."

By Mr. Thiess:

Q. Now, did you so testify? A. Well, I so testified, but he did tell me these things, but he told me, the matter of taking testimony was a few months thereafter, when I called him on the telephone and asked him about a certain condition, he said, "We are taking testimony",—just as I testified to here.

Q. But according to this—— A. That is substantially correct, every word of that.

Q. But according to this testimony, he told you this at the time, as I understand it, that he saw you in Philadelphia. 2420
A. No,——

Mr. Harris: No, he says, "I think he told me at the time", that is what he winds up with.

A. (Continued) He told me that when I telephoned him a few months later, that they were taking testimony. Now, what the testimony was I didn't know at that time, because I didn't get copies of it or anything of that sort.

By Mr. Thiess:

Q. Well, I am not asking you, Mr. Kaufman, whether you knew what the testimony was, I am asking you whether or not your present recollection is, in view of the testimony 2421
that I have just read to you, that at the time that you met Mr. Belknap in Philadelphia he told you that they were taking testimony in Wilmington—— A. No.

Q. —in this case. A. No, they misunderstood me there, or I misunderstood them, that is the answer to it, they didn't.

Q. And how do you fix the date that you met Mr. Belknap in Philadelphia? A. I can't fix any date, I give you my best recollection. It was in the—I know I drove down and it was quite cool, I remember the driving very—I had a chauffeur at that time, and I would fix it at either in March or early April, something like that.

Q. Well, now, did Mr. Belknap tell you at that time that this was a patent case involving a highly specialized art of oil cracking? A. He told me it was—yes, substantially that.

Q. Did you tell him at that time that you had had no experience in patent work and that you knew nothing about oil refining? A. No.

Q. And you didn't inquire of Mr. Belknap why he wanted you in this case, in view of your lack of experience in patent work on oil cracking, did you? A. Did I inquire of him?

Q. Yes, why he wanted you, in view of the fact that you had no experience in this type of litigation? A. No, I never
2423 inquire of litigants, I never cross-examine a prospective client, I rather welcome them.

Q. Well, now, I understood he told you who the other counsel in the case were. A. Yes.

Q. Can you tell me who they were? A. I can't recall now who they were except, the only one I recall at that time was Judge Haight.

Q. You don't remember any of the others that he mentioned to you? A. No, at that time,—well, at that time, I say I don't remember, I can't tell you now, but I can't remember—I couldn't. If you ask me now I could remember who the counsel are, because I—but at that time, you ask me now of my recollection, I assume,——
2424 Q. Yes, that is right. A. —as to what he actually told me——

Q. Told you at that time. A. I couldn't recall now.

Q. Well, do you know, and did he tell you that those gentlemen that were employed, the lawyers, were highly specialized in their type of work? A. He did not.

Q. Did you know that they were? A. I knew that Judge Haight was.

Q. You didn't know respecting the other men he mentoned? A. I didn't know.

Q. Did Mr. Belknap tell you of any services that he expected you to render in this case which could not be

rendered by the lawyers already employed by Universal in this Root litigation? A. I have related exactly what he told me—nothing of that sort.

Q. Now, can you state why it was, since the retainer by Mr. Belknap was in the nature of a hold-off retainer, that you were not to take any employment from any other oil company,——

Mr. Harris: Well, now, just a minute, I don't think that is his testimony.

By Mr. Thiess: 2426

Q. Was that true or was it not?

Mr. Harris: That it was exclusively a hold-off? It was a hold-off plus anything they would call upon him to do, as I recall the testimony.

By Mr. Thiess:

Q. What is your testimony? A. My testimony is on there, that I have related, exactly what he said, I wasn't to take any other case or case involving an oil company.

Q. Well,——

By Mr. Harris: 2427

Q. Had you finished? A. And that I was to be called upon by other attorneys or by him or by anyone connected with the company to perform any services that they might require.

By Mr. Thiess:

Q. And as I understand your testimony, you spoke of some other litigation? A. Yes, he said that they had other litigation in Pennsylvania—that there were about to—they were contemplating litigation in Pennsylvania, and that he

said they had some other cases in—pending. I forget what it was about at this time.

Q. Did he tell you what the character of that litigation was? A. About the same nature.

Q. Patent litigation? A. Infringement, and so forth, patent.

Q. He just told you generally that there might be some other patent litigation, is that correct? A. He mentioned the name but I can't just recall at this minute, I can't retain——

2429 Q. Well, now, in this conversation that you had with Mr. Belknap in Philadelphia is it not a fact that the specific amount of your fee was not discussed? A. I think that may be true; I am not—I am quite sure that what I have related here—there wasn't anything said directly. Now, there may have been, but I doubt it. I doubt very much if there was. I don't believe there was anything said about the fee.

Q. Now, in the conversation with Mr. Belknap did he tell you at that time that whichever side lost there would be an appeal taken to the Third Circuit Court of Appeals? A. He told me at the time that the case will go to the Supreme Court of the United States, whichever side lost. He says,
2430 "It is a case of great moment, involves many, many millons of dollars."

Q. Did Mr. Belknap at that time tell you that he expected to use you in the appeal of the Root case? A. He didn't say as to what he intended to use me for. I have outlined that.

Q. Mr. Kaufman, did you keep diaries covering your activities during the year 1932? A. No, I did not. I have never kept any diaries.

Q. Kept no record of any kind? A. Oh, I kept a record from day to day, and when the thing was done, why, I just tore it up and threw it in the waste basket.

Q. Do you have any record, letter or any document which shows your whereabouts during the year 1932? A. No.

Mr. Thiess: Have you got the subpoena there?

By Mr. Thiess:

Q. Have you made a search for the documents referred to in paragraph 1 (a) of the subpoena? A. What was that? Will you read it to me?

Q. All memoranda, reports, correspondence, telegrams, diaries, writings, and printings of every nature of whatsoever date—or copies thereof. A. I have none of these things, 2432
the Government took all of it. They walked into my office and grabbed everything I had, just grabbed it, that is all, they didn't ask for it, they didn't have a subpoena, they took my income taxes and every work sheet that I had and every paper that I had and just put it in bags and they took it off. They weren't satisfied with what I gave them so they came up and got everything else they wanted, and they have got it all down there.

Q. Well, does that—— A. And they have never given it back to me.

Q. Mr. Kaufman, does that mean, or does that refer to all the documents referred to in this subpoena? A. No, I 2433
don't know what other documents you mean. They practically took everything I had there, except what was in the courts at that time. The balance here is in the federal courts.

Q. Well, did you make a search for the documents and material called for in the subpoena, and did you find any of them? A. I didn't make a search because I knew I didn't have anything. I haven't got nothing. Everything is over here, I understand. I called up my counsel, Mr. Gain, and I asked him if he had any of these papers.

He said, no, they were all left over here in the federal court, and are impounded, I understand.

Q. Well, then, as I understand it, as far as you are at present aware, you have none of the documents called for in the subpoena? A. I haven't anything that will assist you in any wise. In fact, I don't know what the Government has today down there, they have taken everything.

Q. Well,—— A. That I ever had in there.

Q. Did you ever have any document or any character—— A. I don't know.

Q. —which shows that you were retained by Mr. Belknap in 1932? A. No, there is no writing of any kind.

Q. No writing either at that time or at any subsequent
2435 time? A. No writing at any time.

Q. Now, did you ever meet Mr. Belknap again, personally? A. No, aly over the telephone.

Q. And when did you next call him on the telephone? A. Within a few months after that.

Q. You can't fix that telephone—— A. During the summer, early spring, summer.

Q. Now, when you cal'sl him at this time on the telephone how did you ascertain where to call him? A. He gave me his telephone number.

Q. Where did he give you this telephone—— A. I don't recall, giving me the number, now.

2436 Q. Well, do you know what town? A. New York City.

Q. You have no recollection at all where it was that you were to call him in New York City? A. That is at the office, I assume, of the Universal Oil Company, I don't know, I have never been down there——

Q. And he gave you no other telephone number or no other address? A. Well, at that time I knew it, but what—I can't recall, that is ten years ago, he may have given me his hotel address or——

Q. And how did you know that Mr. Belknap was going to be at the Universal Oil Products Company at the time

that you—— A. I didn't know, I called him up and he was there.

Q. And he happened to be there? A. Yes, they put me on.

Q. And you don't know what the date was? A. I couldn't tell you.

Q. That was in the summer, you say? A. Yes.

Q. Could you give us the substance of the conversation, the telephone conversation you had with Mr. Belknap at that time? A. Well, I simply asked him, "What is new, Mr. Belknap?", and he said, "Why, there is nothing new, we are in the midst of taking testimony", or something of that sort, "in the Root case." 2438

Q. And did he tell you that the Root case was still being tried at that time? A. That they were taking testimony, yes.

Q. And did he tell you anything further? Did you ask him anything further and did he tell you anything further? A. He may have, I can't recall the conversation. This happened ten years ago, you know. A lot of things have happened, at least to me, in the last ten years.

Q. Well, you only remember then that at that time he told you that the trial was on, when you called him? A. I recall—I believe that is what he told me at that time.

Q. Did you ascertain from Mr. Belknap at the time how he happened to be in New York while the case was being—— was on trial in Wilmington? A. I don't know, it may have been on a Saturday that I called him. He said, he simply said that the case was on trial. Now, whether he meant on that day, or had been on trial I can't recall just what he meant, what he—I don't remember the details of it, wouldn't attempt to give you the details of it. 2439

Q. Well, now, did you again call Mr. Belknap on the telephone? A. Yes, I called him.

Q. Do you remember when that was? A. I think it was the early fall.

Q. Fall of the same year? A. Yes.

Q. That is 1932? A. 1932.

Q. And do you remember the occasion of that call? A. I simply happened to be in New York and I called him, and if I remember correctly he told me that they were awaiting a decision, or argument, or some darned thing, I can't recall just what he did say about that particular time.

Q. And where did you call him at that time? A. Now, I am not sure whether I called—whether they transferred the call or not. Now, I called him at the place that he gave me before. Now, whether I called the other number or whether this number, I am not sure.

2441 Q. And you believe that the number that you called was the offices of the Universal Oil Products Company? A. I say, I don't believe, because I can't recall numbers ten years ago. That would be absurd.

Q. Well, I am not asking you to recall the number. A. No.

Q. I wondered whether you knew or—— A. I don't know, no.

Q. You have no idea where you called? A. No, none whatsoever.

Q. And did you have another telephone call with Mr. Belknap? A. Oh, I have had several calls but I can't recall

2442 just the number and how many.

Q. You don't remember how many calls you had with Mr. Belknap? A. I had several calls with him, yes.

Q. Well, we have referred to two here. A. Well——

Q. Now, do you remember the substance of any of the other calls that you had? A. It is along the same line, possibly, I can't recall anything definite as to what was actually said there, except with the discussion of the case.

Q. And all these calls were made at that same number? A. I wouldn't say that, it may have been a different number.

Q. Well, they were all in New York? A. They were all in New York, yes, sir.

Q. And what makes you say that might have been a different number? Do you think that Mr. Belknap gave you another number to call? A. I think he gave me two numbers. Now, whether I am right or wrong, or whether the company gave me a number to call, I can't recall. I might have called up last week, I couldn't tell you what they said. about whether a number is so and so, or call him up at such a number, may have said that, I don't remember.

Q. Well, do you remember at any time calling Universal and their saying to you, "Why, call him at such and such a number"? A. Why, that would be impossible for me to remember, a thing of that kind, ten years ago. You couldn't 2444
remember. No one else could.

Q. Now, you were never attorney of record in the Root case, were you? A. No, sir.

Q. Now, you have stated that you knew Judge Haight? A. I did.

Q. Did you ever see Judge Haight at Jersey City? A. Yes.

Q. Do you remember the first time you saw Judge Haight in Jersey City? A. I remember seeing him many, many times. The first time I can't recall. It wasn't before '32, it was subsequent to '32.

2445

Q. Well, do you remember the occasion for going to see Judge Haight in Jersey City? Was it in connection with the Root case? A. I saw him on so many matters that I can't really recall. The first time I do recall meeting Judge Haight in the Root case was when he was up in Scranton, he licked us in the—let's see—or, no, he tried to get an order fixed in a case that I was on the opposite side, and we sat down and we discussed this Root case for an hour.

Q. This was in Scranton? A. Scranton.

Q. Do you remember when that was? A. I think that was in '34.

Q. 1934? A. That is the time of the Tri-Ergon case and that was in '34, I remember that quite distinctly.

Q. Was Mr. Haight there at that time in connection with the Tri-Ergon case? A. He came up there to fix an order, to fix some sort of an order, he sent for me, and then he discussed—then he sat down and we discussed the Root case.

Q. Well, was this order, whatever you are referring to, was that in connection with the Tri-Ergon case? A. No, oh, with the Tri-Ergon, yes, pardon me.

Q. What? A. Yes, that is correct.

Q. Then as I understand you, at the time that you talked
2447 this Root case with Judge Haight in Scranton, he was down there on the Tri-Ergon case, is that correct? A. That is one of the things he was down on.

Q. Yes. A. I assume, now, he may have come down solely for that, but while he was there we were—we sat down and we discussed the Root case. Now, I don't remember whether he came down——

Q. Do you remember the substance of any of the conversation you had at that time? A. I can't even recall the character of the order he got at that time.

Q. I mean in respect to the Root case. A. Oh, he just went over the facts of the case and told me how they pro-
2448 gressed and the progress of the case, and all that, and I think he said they had at that time—I think they had a decision from Judge Nields at that time.

Q. But you don't remember what the discussion was? A. Oh, I can't recall the conversation.

Q. Now, do you remember of any other time that you met Judge Haight and discussed with him the Root case? A. Yes, after that date I went to his office on several occasions and discussed the case with him.

Q. The Root case? A. Yes.

Q. And you went to Jersey City? A. Yes, I was living in New York then at that time. I became receiver for the S. W.

Straus Company, and I had an office there, it was only a short distance, and I ran over to see him.

Q. Have you any recollection as to when the times were that you went to see him? A. I haven't any recollection.

Q. Have you any recollection as to the subject matter of the conversation when you saw him at those times? A. About the character of the case and the progress of the case. He was a great fellow to sit down and show me the—how this apparatus was working and all that sort of thing, great fellow to draw outlines and show me the importance of how the Dubbs patent—I think it was an improvement on some 2450
old patent that they had, and how some Eugoff——

By Mr. Harris:

Q. Egloff? A. Egloff, that is right, is even an improvement on that, and all that line. We had spent many very pleasant hours consulting, that is, discussing this matter.

By Mr. Theiss:

Q. And he discussed, he made drawings and discussed the technology of this case with you, did he? A. Oh, we were—in our general discussion, yes.

Q. And you don't remember how often you did that? A. 2451
Oh, he didn't do it more than once, but he might have done it the second time, if something we were discussing——

Q. Well, the thing I have particular reference to, Mr. Kaufman, do you remember how many times you went to Jersey City? A. No, I do not, maybe several times.

Mr. Harris: You mean in the Root case?

Mr. Thiess: On the Root case.

The Witness: I couldn't tell you exactly how many times.

By Mr. Theiss:

Q. Was it more than three or four times? A. I don't think so.

Q. Did Judge Haight ask you to come down to see him or did you just go in to see him, Mr. Kaufman? A. Well, I went down on numerous other matters at times, I may have gone down there twice or three times on the Root case, but on other times I went down there on other matters. We had —we had other business together, we had other cases together.

2453 Q. Well, did Judge Haight call you down to see him in connection with the Root case? A. No, I don't think he—my recollection is he didn't call me down. I may be wrong about it, he may have, but I doubt it.

Q. Now, do you remember any other occasions that you talked to Judge Haight? A. Oh, I have talked to him on many occasions.

Q. I mean with respect to the Root case. A. Oh, I don't know, I couldn't say that, I don't know.

Q. Now, you have stated that you knew some of the other counsel involved in this litigation. Did you ever meet William F. Hall? Do you know him? A. I don't think I

2454 do.

Q. Did you ever meet Charles M. Thomas? A. Yes, I think I have.

Q. Do you know when you met him? A. Well, I am sure I met him while we were trying the case in—in Philadelphia here, before Judge Welsh, if he was one of counsel. I think he was.

Q. You mean—— A. Is that the Washington lawyer?

Q. —the Crew Levick case? A. The Crew Levick case, yes.

Q. You met him in connection with the Crew Levick case? A. Yes, I met him in connection with that case.

Q. You didn't meet him in connection with the Root case? A. Well, now, I met some lawyer up there. Now, who these lawyers were, at the time, I don't—you mean at the Universal office?

Q. Well, at any place in connection with the Root case? A. Well, I met Mr. Behrens there.

Q. Yes. A. I met Judge Haight there, and I met some other lawyer there, what his name was I don't know.

Q. Did you meet Judge Hugh M. Morris in connection with the Root case? A. No, I know Judge Morris very well. In fact, he was my counsel in the Straus Investing Company. 2456

Q. Well, did you have any discussions with him in respect to the Root case? A. I didn't know at that time that he was in that case, as I recall.

Q. And did you meet Lee J. Gary, of counsel for the Root case? A. I couldn't say. Those names don't sound familiar to me.

Q. Did you ever meet Mr. W. D. Whitney in connection with the Root case? A. No, sir, I don't remember that name.

Q. I believe I did ask you that question—isn't it a fact that you first met Mr. Thomas in connection with the Crew Levick case? A. Well, I am not sure about that, now, I think I—it was some lawyer, now, I assume—you know, I couldn't tell Mr. Thomas if he came in here, notwithstanding—I am very poor on recognizing, unless—I am not sure whether I met him at the Universal offices or not, before that. It may be that I had. I met someone there. 2457

The Master: Have you come to a good place to stop?

Mr. Theiss: All right.

The Master: Very well, we will suspend until two o'clock. I am sorry to make it an hour and a half, but I have another engagement I am afraid I can't avoid.

(Recess, 12:30 until 2 o'clock P. M.)

2458 *Morgan S. Kaufman—For Amici Curiae—Direct*

AFTER RECESS

Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae, (Continued):

MORGAN S. KAUFMAN, recalled.

Direct Examination by Mr. Theiss (Continued):

Q. Mr. Kaufman, how did you learn of Judge Nield's de-
2459 cision in the Root case? A. Well, I was advised by some-
one, I can't recall who it was now, I think I received a print-
ed opinion or a typewritten opinion.

Q. Do you remember when that was with respect to the time that the decision was handed down? A. When I received it?

Q. Yes. A. Shortly after it was rendered.

Q. And do you have a copy of that decision? A. The——

Q. The one you received? A. I don't—I may have and may not have. It may be, it may be—I know I had two copies, I think I had two copies of the opinion. I don't have it in my possession. I may—I may have had it at one time or another. You see, I have been moving a great deal, from
2460 Scranton to New York, and from New York to Philadephia, and moving around, and I never took personal charge of the records.

Q. You wouldn't know at the present where that decision is that you had? A. It was a printed affair.

Q. Yes. A. Printed or typewritten, I can't remember

Q. Do you know who sent it to you? A. I wouldn't know who it was, not now. I did at the time.

Q. Was there an accompanying letter with the decision? A. May have been, I don't recall.

Q. You don't have any such letter? A. I don't have it here, I don't have it there. I don't know what became of it.

Q. When did you first learn that the United States Government was investigating your relations with Judge Davis? A. First time I learned it, I think, was a telegram that I received while I was in Miami, or Palm Beach, I can't recall the date. They came in, some F. B. I. came into the office and wanted to know when I was going to return, and my secretary wired me, and I called her on the phone and then asked what he wanted, and, well, he didn't know—she didn't know particularly what he wanted.

Q. Do you remember what year that was? A. Have you got the date of the first matter, first hearing before the Grand 2462
Jury?

Q. Yes, you mean New York? A. Yes.

Q. February 20, 1940. A. I think around there, I think that is about the time.

Q. You would place that in 1940? A. I think so.

Q. In the early part of 1940? A. I think so.

Q. And you heard of that while you were in Florida? A. That is my recollection today, that that is the first time I knew anything about any investigation.

Q. When you were examined by Government's counsel in the Grand Jury proceeding in New York in respect to this Root litigation did you communicate with anybody in Uni- 2463
versal Oil Products Company organization or with their counsel, advising them that you had been examined? A. No.

Q. Well, didn't you consider it more or less your duty to advise the officers of the Universal or their counsel that such an investigation had been started?

Mr. Harris: I think that is a very improper question. It has no relevancy here.

The Master: Well, the question is: Did he?

Mr. Harris: No: Did he consider it his duty?

The Master: I understand he said he did not do it, so I think that is perhaps enough.

The Witness: I suppose I would have to do the same thing with every client I ever had in my life, so I don't know why I should select Universal.

By Mr. Theiss:

Q. Well, I mean, I am asking you, this investigation was on with respect to the Root case. A. That wasn't on at all with the Root case, that wasn't on at all, they were investigating, as I understood, they were investigating Judge Davis. I never knew anything about the Root case having anything to do with it.

2465 Q. You were interrogated before the Grand Jury about the Root case? A. Yes, at that time the Root case, yes, I was interrogated about many things.

Q. But you didn't advise Universal—— A. No.

Q. —as to—— A. I never discussed it with Universal. I think the first time I met Judge Haight was way back after the case had been—after the first trial had been here, after that what-do-you-call-it there—I don't remember ever discussing it.

Q. In other words, you never discussed it with Universal—— A. No.

Q. —until you saw Judge Haight after the first trial?

2466 A. I think it was after the first trial, I met him some time.

By Mr. Harris:

Q. That is, the first criminal trial? A. Criminal trial, yes.

By Mr. Theiss:

Q. And have you any idea when that was? A. Well, the first trial was in——

Q. It was shortly after the first trial was completed? A. That is my recollection today. I remember meeting him

sometime, and I discussed it, either before or after the first trial, I can't recall.

Mr. Harris: I understand the witness—you are not suggesting by this that the witness did not mean what he said when he said he had never discussed it with Universal at any time?

Mr. Theiss: I didn't quite get the significance of your question.

Mr. Harris: Well, I want to be sure that you would not argue from what Mr. Kaufman has now said, about seeing Judge Haight, that he was modi- 2468
fying his statement that he never discussed it with Universal or any of its officers.

By Mr. Theiss:

Q. And did you discuss it with anybody else in the Universal organization or their counsel? A. No.

Q. Just this one time that you discussed it with Mr. Haight? A. Well, I discussed it——

Q. Judge Haight. A. —yesterday morning for an hour, for almost an hour, with Mr. O'Mara.

Q. About an hour? A. I should say so.

Q. And when you discussed it with Mr. O'Mara did you go over any of the proceedings that had been taken in this 2469
case? A. No, he—if I may be permitted to say what——

Mr. Harris: Certainly, I wish you would.

The Witness: Is that perfectly all right?

Mr. Harris: Certainly, I wish you would.

The Witness: Why, he simply asked me if I had anything to add to what I had said before the Grand Jury at any time or before the court here in any of these things, if I recalled anything.

I said, "No," I says, "I disclosed everything that I knew about this matter," and I inquired about how

2470 *Morgan S. Kaufman—For Amici Curiae—Direct*

Judge Haight's widow was, and we just discussed things generally.

By Mr. Thciss:

Q. At the time that you were interrogated by the agents of the Government you had in your possession in addition to this decision that you were talking about, that we have talked about, Judge Nield's decision of the Root case, some other papers. Do you remember those? A. Every paper I had the Government has, and I haven't seen them from that day to

2471 —I have seen them in the trial and different places but——

Q. Well, do you remember what those other papers were? A. I haven't any idea what they were. They just walked in and grabbed everything I had, and I didn't keep—I didn't get a record, practically, of only half of the things that they got.

Q. Well, do you remember of any other papers that you did have that pertained to this Root litigation besides Judge Nield's decision? A. I couldn't tell you, no.

Q. Couldn't tell us? A. There is very little, there is very little, everything that I did was over the telephone to all of them, practically. I was in New York all the time.

Q. Well, now, isn't it a fact that at the time that the

2472 Government came to you and got these papers in connection with the Root case that the only papers that you had in your files were Judge Nield's decision and another book, which might have been the record or a brief? Do you remember that? A. I had very little papers, if any, in the Root matter, if that is what you mean. I don't recall what I had, but I had very little.

Q. You had no correspondence file or any phone call file? A. I don't recall of any.

Q. Yes. A. There was really no correspondence that was necessary that I knew of. I was a great fellow to use telephones wherever I could.

Q. Well, have you any recollection how these other books, whether record or a brief, that you had at the time that the Government investigated your files, how they were delivered to you? Were they mailed, or—— A. I couldn't tell you that at this time.

Q. You wouldn't know whether they were mailed or handed to you personally? A. May have been handed to me, may have been given to me at different times. I may have asked for a book sometime in some matter that I had, I don't know.

Q. Now, what is your recollection as to conferences you may have had with Universal Oil Company's lawyers with respect to the Root case? How many did you have? A. You mean, now, with the—— 2474

Q. The lawyers, with any of the lawyers of the Universal Oil Products Company. A. Well, now, you are distinguishing between the Root case and the Crew Levick case,——

Q. Yes. A. —I assume.

Q. I am. A. Well, I think all of my conferences, so far as lawyers were concerned were with, practically, Judge Haight.

Q. And you have no recollection of having any conference with any other lawyer in the Root case? A. Actual conference, no. I may have been in the room, if that is what you mean, but I had no actual, real conference with them. 2475

Q. Now, did you ever do anything on briefs in connection with the Root case? A. Me personally? No.

Q. Yes, did you do anything on briefs in the Crew Levick case? A. Crew Levick case, we didn't get as far as briefs in that case. I do recall, however, that there was some—I was over at the Universal office while they were preparing a brief, the brief that finally went to the Circuit Court of Appeals.

By Mr. Harris:

Q. In what case? A. In the Universal Oil versus Root.

2476 *Morgan S. Kaufman—For Amici Curiae—Direct*

By Mr. Theiss:

Q. And when was that? A. Well, that was just before the appeal was filed, whatever date that was, the record would show it, and there, there was some discussion, now, with whom I can't recall, but I knew the discussion came up as to the question of the commercial success of the Universal product, and then the question came up as to whether my name should appear upon the record on the brief. I told them it didn't make a particle of difference to me, and the Judge said to me at the time, he said, "Now,——

2477 Q. Is that Judge Haight? A. Judge Haight said to me at the time that, "I don't think that the judges like to have too many names appear on the brief, particularly when they don't participate in the actual trial of the case or in the argument"—or taken in at the argument unless they actually try the case, or something of that sort, I can't recall which, and it didn't make a particle of difference to me, and I said so at the time.

Q. Well, you remember that this discussion was with Judge Haight? A. Yes.

Q. Now, did you have a discussion with any of the other lawyers of Universal at that time? A. No.

2478 Q. And who brought up—— A. There may have been someone there at the time, I didn't know Mr. Behrens at that time, but he was walking in and out of the room, I didn't know who he was then. There was someone else there, I don't remember who the man was.

Q. Well, did you ever do any actual work on any of the briefs, either in Crew Levick or Root? A. No.

Mr. von Holst: Was that question answered?

Mr. Thiess: He said, "No."

The Witness: There were no briefs on the Crew Levick case.

By Mr. Thiess:

Q. Now, before the Grand Jury in New York didn't you testify as follows——

Mr. Harris: What page are you reading from, Mr. Thiess?

Mr. Thiess: Oh, you have got the Grand Jury testimony.

Mr. McCullough: I also have the pages.

Mr. Thiess: What?

Mr. McCullough: I have the page numbers.

Mr. Thiess: All right, this is on page 42 of this. 2480

The Master: Of the Grand Jury testimony, or of my excerpts?

Mr. Thiess: Of your notes. Have you got it?

Mr. McCullough: Page 42 doesn't work on this.

Mr. Thiess: It is about 766, 767, of the Grand Jury notes.

Mr. McCullough: All right.

By Mr. Thiess:

"Q. And if any briefs would be drafted, they would also likewise be drafted in the New York office? A. Yes, but most of the briefs that were drafted, for instance, if it was in Philadelphia it would be in the Associated Gas office, or if it was on the Universal it would be in the Universal office, or over at Judge Haight's office and copies would come back to me, and I would redraft them or send them back in such form as I thought would be necessary, or go over there and straighten the thing out." 2481

A. That is all right.

Q. Now, do you remember so testifying? A. Yes, sir.

Q. Well,—— A. That didn't refer to the Universal, however. We were discussing the Gas and Electric Companies,

Associated Gas, and I was referring there to a number of other matters.

Q. Oh, you refer here, do you not, to going to the Universal offices—— A. I was there——

Q. —and preparing briefs? A. —at the Universal office.

Q. Did you work on other briefs than the Universal briefs in the Universal offices? A. Oh, no.

Q. Well, then, how do you reconcile that with your statement before the Grand Jury? A. Well, there is nothing wrong about that statement, if you read it again, you will see that I was referring to other—to other companies, outside of the Universal. I was doing a lot of other work with other concerns, where they had matters in Pennsylvania. There was the Associated Gas and Electric, and a lot of other companies—Paramount Pictures.

2483

Q. Now, you have referred to this meeting that you had in the Universal offices where they were preparing the brief on appeal, and you had this conversation with Judge Haight about your name appearing on the brief. Do you know who brought up that question, about putting your name on the brief? A. I think it was Judge Haight.

Q. And do you remember who the other counsel were who were present at that time? A. I can't recall now. I have been trying to think. There was someone else in the room there, I don't know who it was.

2484

Q. Do you remember how long you were there at that time? A. Well, I must have been there for—well, I would say at least an hour and a half or so, a lot of people coming in and out—maybe longer, I don't know.

Q. And the people that were coming in and out, were they the lawyers that were representing Universal, or don't you know? A. I knew they were connected with Universal, I assumed that they were lawyers, outside of——

Q. But you didn't recognize any of them? A. Did I recognize any? No.

Q. You didn't know them? A. No, I didn't know them.

Q. What, if anything, was said at this meeting, besides the question of your name appearing on the Root brief in appeal? A. They were discussing amongst themselves there, he was reading over a great deal, the Judge was reading over that part of the commercial success of the patent.

Q. Were you the only one present at the time—— A. No.

Q. —that this occurred? A. There was someone else there, and I just couldn't think who the man was.

Q. And Judge Haight read the brief, that part of the brief, to you? A. He was reading it over and part of it was typewritten and part of it was fastened with—some of it 2486
was written by hand, and they were just getting it prepared.

Q. And they were reading this part of the brief to you, were they? A. No, they were reading it amongst themselves when I came in, and they kept it up.

Q. And you sat there and listened? A. And I sat there and listened.

Q. Did you offer any comments at the time? A. I don't think I did.

Q. Now, did you have any other conferences with other attorneys respecting the Root briefs or litigation except this one conference when you were in New York, at which you discussed with Judge Haight the proposition of putting your 2487
name on—— A. Well, I told you about the times I went over to Jersey City to see Judge Haight.

Q. But these were just—you had no other conferences except those at Jersey City and this one in New York that we have been talking about? A. Substantially correct.

Q. At the time that you had this conference in New York with Judge Haight, was any reason given why your name should not appear on the brief? A. I gave——.

Mr. Harris: Well, just a minute, he has already given that.

The Witness: I gave you the reason.

2488 *Morgan S. Kaufman—For Amici Curiae—Direct*

By Mr. Theiss:

Q. And your reason was merely that they did not want so many names on the brief? A. My impression is that is what the reason was. Now, he may—that is all I can recall at this time—now, he may have given me some other reason, I think there was something said about, that he either lived, that one of the judges—I think it was Judge Buffington—lived at the same hotel with my brother, or something of that sort, and they were very friendly, and he thought that it would be much better not to have me on the brief, or some-

2489 thing of that, I can't recall just what it was. There was a good deal said there and I am giving you my—but the outstanding thing that I recall was the real reason that he gave to me was because—that is, what impressed me was the fact that I had not been in the court below, and that—also that I didn't intend—and as long as I didn't intend to argue the case, he thought it would be improper to have too many counsel on the brief.

Q. Well, at that time you were a pretty close friend of Judge Buffington and Judge Davis, also, were you not? A. Oh, yes, I have been friends to all the judges there, in fact, all the judges of the Supreme Court——

2490 *By Mr. Harris:*

Q. Of the State of Pennsylvania, Commonwealth of Pennsylvania? A. Why, they have all been, I guess most of them, been up at my home.

Q. You didn't mean the United States Supreme Court? A. No, the Circuit Court of Appeals, District Judges, and the Supreme Court of the State, I knew them all very well personally, very well.

By Mr. Theiss:

Q. Were you——

The Witness: I think I have been fishing with most of them at one time or another.

By Mr. Harris:

Q. You live up in the fishing country, don't you? A. Yes, we are right in the heart of it.

By Mr. Theiss:

Q. Were you as well acquainted with Judge Davis and Judge Buffington as your brother David? A. I don't think at that time I was as well acquainted with them as that, no. 2492
I knew them very well, but——

Q. Did you attend the argument on appeal in the Root case? A. I did not.

Q. Do you know why you did not? A. I think I was out of town that day.

Q. Did you know when the argument was on? A. I did.

Q. Were you requested by counsel of Universal to attend the argument? A. They didn't request me.

Q. Did they notify you as to when the arguments would be had before the Court of Appeals? A. I knew it, I think—I think that I was—in my conversation with Judge Haight, he told me it was fixed for a certain day, a few days before 2493
that.

Q. Isn't it your custom to attend arguments before the Court of Appeals in cases that you are interested in? A. As a rule, that is right.

Q. Do you know any reason why you did not attend this particular argument? A. No, except that I must have been out of town somewhere, or had something to do, I can't recall.

Q. How did you learn of the Court of Appeals decision in the Root case? A. Well, in the first place, the first time I saw it was in the newspapers.

2494 *Morgan S. Kaufman—For Amici Curiae—Direct*

Q. And how about the decision, did you actually receive the decision? A. I think a copy of the opinion was forwarded to me, I think it was printed.

Q. Do you know who sent it to you? A. I do not.

Q. Then you don't know either whether there was a letter of transmittal accompanying the opinion? A. I couldn't recall.

Q. You have no recollecton of that? A. I know I got it.

Q. You didn't send for it yourself? A. No.

Q. Now, did you learn of the filing of the petition for a re-hearing in the Root case? A. Yes.

2495 Q. When did you learn of that? A. I think after it was filed, after the re-hearng—petition was filed for re-hearing, I heard of that.

Q. You heard of it before the Court took any action on the petition? A. Well, naturally, you would have to—I heard it after it was filed.

Q. After it was filed, and before the Court acted on it? A. Right.

Q. And did you later learn of the action of the Court of Appeals on the petition? A. I did.

Q. And how did you learn about those two matters? A. I either called up or they told me directly, either the Judge

2496 called me, or I may have called up the Clerk's Office.

Q. Well,——

By Mr. Harris:

Q. Well, now, by the Judge, who do you mean? A. Judge Haight, I speak of; when I speak of the Judge, I mean Judge Haight.

By Mr. Thiess:

Q. Well, you must have—how would you call up the Clerk's Office, how would you know—— A. Oh, I knew the Clerk of the Circuit Court very well.

Q. No, but I mean, how would you know that the decision had been handed down? A. Had been handed?

Q. Yes. A. I called him up and found out. It may be possible that the Judge called me. I am not sure about the details of those things. I had a lot of matters in the Circuit Court of Appeals off and on, and the District Court.

Q. And when did you actually learn of the action of the Court of Appeals on the petition? Do you remember that? A. You mean as to the denial of the petition?

Q. Yes. A. Shortly afterwards, I don't recall just the dates, it may have been the same day, it may have been a week after, I don't recall. 2498

Q. You can't fix it closer than that? A. No.

Q. But it would have been within a few days? A. I imagine so.

Q. And is that also true with respect to the filing of the petition? A. I assume so.

Q. Now, do you know—where were you, where were you at the time you learned of this filing of the petition and the decision on the petition? A. Where was I?

Q. Yes, do you remember? Did you get that information in your office? A. It may be that I got it in my office, I can't recall now. It may be that I got it while I was here in Philadelphia. I don't recall now. 2499

Q. Do you know, Mr. Kaufman, that a petition for certiorari was filed in the Supreme Court in the Root case? A. Yes, I learned that, I think, when I came down to speak to Mr. Halle about the fee. I think that was the first time I learned that there was a——

Q. And how do you associate that with speaking to Mr. Halle about the case? A. He told me.

Q. He told you what, that the petition had been filed? A. Yes.

Q. And did he tell you anything else with respect to the petition? A. Yes, he told me he expected that the petition for certiorari would be denied,——

Q. Yes. A. —his counsel advised him, and he didn't think there was any question upon which the Supreme Court could act.

Q. Did you work on that petition at all? A. I did not.

Q. Did you ever have a copy of the papers that were filed by Universal in the Supreme Court? A. I don't think I did. If it wasn't in my file, I didn't have it.

Q. When did you learn of the action of the Supreme Court denying the petition for certiorari? A. I really—I really can't say now whether I learned it from the news-
2501 papers that next morning or whether I learned it from Mr. Halle when he gave me the check.

Q. Did you get a copy of any notification from any of Universal's attorneys or from any member of Universal, either oral or written, before you saw Mr. Halle, respecting the denial of the petition of certiorari? A. I can't say. I don't think I did.

Q. Did you participate in any way whatsoever, and were you advised of any proceedings in the Root case after the petition for certiorari had been denied? A. I don't think that I was, I possibly—stop and think—I did—Judge Haight told me that there was some sort of proceedings back in Delaware in some—what it was, now, I can't recall.

2502 Q. But you did not participate? A. No, I did not, but he told me about some kind of a new rule, new petition had been filed, or something, but I didn't participate.

Q. So that you knew nothing about any further proceedings? A. Only what he just—only, as I recall, what he told me.

Q. Now,—— A. I think the case was practically—I thought the case was finished, but he did tell me something, that there was some sort of a petition filed.

Q. Now, did you maintain an office in Philadelphia, Pennsylvania? A. No, I did not. I had—I had an office with

my brother here, that is not—my name was on the door, I was a member of the Eastern District of Pennsylvania, but not a member of the Philadelphia Bar.

Q. Was any work in the Root case done in this office that your brother had in Philadelphia? A. No.

Q. Now, I take it you know Hiram J. Halle. A. I do.

Q. Who else do you know in the organization at the Universal Oil Products Company besides Mr. Halle, Hiram J. Halle? A. I know Mr. Behrens.

Q. Anybody else? A. I met someone there, I can't think what their names are now.

Q. Do you know Mr. Carbon P. Dubbs? Did you ever 2504
meet him? A. I would remember him if I met him.

Q. When did you first communicate in any way with Mr. Halle? A. After I learned of Mr. Belknap's death.

Q. And what was the substance of the conversation that you had with him? A. Oh, I picked up a paper that morning and I saw that he had died, dropped dead or died, I can't recall which, and I called him up, to extend my sympathy to him, condolence, and I knew that he had been very close to him, from what Mr.—and he seemed to know all about me, over the telephone, Mr. Halle did, and he—we just spoke for a few minutes about pleasantries, and that was substantially all that was said at that particular time.

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Q. Nothing said about the Root case? A. May have been, I can't recall now, there may have been some little thing said, or I asked him how the thing was progressing—nothing of any consequence.

Q. Where did you call him—— A. He did invite me over there to see him—he says, "Whenever you get down here, come down and see me."

Q. Where did you call Mr. Halle, Mr. Kaufman? A. At his office.

Q. Do you have any record of any kind of this telephone conversation? A. No.

Q. I mean any—— A. We don't have a record, or what do you call it, we pay by the month, we are entitled to so many calls, at so much a call.

Q. I have in mind a diary, or anything. A. No.

Q. Now, when did you next contact Mr. Halle in any way, do you remember? A. My recollection is that the first time I went over there, when those briefs, when those briefs were being prepared, when they discussed my name being on the record, was the first time I was introduced to Mr. Halle, by Judge Haight, as one of our counsel in the Universal Oil
2507 case, now, that is my recollection, and he met me there, he had a bunch of papers, I know, I remember meeting him that particular time because he was a different size man than I expected to see, entirely, I thought he was a great, great, strapping fellow, instead of that he was a little short, and he was very busy, met me there, he had a bunch of papers in his hand, he said something to one of the other men there, and he walked out, and that was the first time I ever met him.

Q. Well, then, it is now your recollection that you met Mr. Halle at the time that you were there and talked to Judge Haight about the brief? A. I think so, I think that is the first time.

2508 Q. Now, have you got a positive recollection of that? A. I am quite positive, I met him, and I think it was that particular time, at that particular time, when I first met him.

Q. It was just a casual meeting? A. Just casual, and he introduced me as one of the counsel in the case.

Q. And when would you place that, that you saw, met, Mr. Halle? A. Well, that would be just before the briefs were filed, I assume. You know, lawyers usually wait until the last minute before briefs are filed. Whenever that brief was filed, I would say a couple of weeks or so before that time, within that time.